



Class JK 155

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Abstract FEDERALIST.



AN
ABSTRACT
OF
Dawson's Fœderalist

BY

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PREFACE.

An inherent modesty and a becoming regard for the truth force me into the confession that this "Abstract" did not wholly originate in a spirit of philanthropy; nor was it altogether conceived in a selfish desire for riches and renown; but it was rather the result of a condition (not a theory) over which the average University student has no control; of a well-defined conviction that without the summary adoption of heroic measures my longing and thirsting after a certificate on Constitutional Law would prove but an empty "an iridescent dream. The ghost of many a good man who had made "everything *except* Foederalist" in his mad struggle after a "B. L." rose up to admonish me that something must be done and that quickly; that something took definite form in the plan here adopted. Hence, you will see, that my "Abstract" was begun in a spirit of self-preservation; and it was not until some 400 pages of Foederalist had been generously interspersed with "wherein consider's" that desire for self and the world's applause gained the mastery. And now if the students will be as charitable as I have been frank, and regard this effort with some degree of favor, then will I account myself thrice happy.

WILLIAM ARMISTEAD FALCONER.

Ft. Smith, Ark., June 6, '94.

PRELIMINARY.

The War of the Revolution was at its height, when in 1776, the American colonies feeling the necessity of unity and system in their struggle against Great Britain, called a Convention to meet at Philadelphia to organize a general Government. On the 4th of July this Convention reported the Declaration of Independence and eight days after adopted the "Articles of Confederation," whose many glaring defects are so strongly portrayed in the "Foederalist."

Under this loose-jointed form of Government, the colonies fought out the Revolution; but after a six years' trial of this Government, during profound peace, with no authority at home and no influence abroad, its insufficiency was too apparent. It was in this state of affairs that eleven of the thirteen States responded to a call to meet at Philadelphia in May, 1787, to try and patch up the tottering Governmental fabric.

The delegates that met in compliance with this call composed one of the ablest and most patriotic bodies that ever assembled in any country: Washington, Peyton Randolph and Madison, from Virginia; Luther Martin, of Maryland; Benjamin Franklin and Robert Morris, of Pennsylvania; Charles Pinckney, of South Carolina, and Alexander Hamilton, of New York, were the transcendent spirits of the Convention. During the four long, exciting and trying months of that Convention, the calm dignity and firmness and the calm confidence of Washington, which never abated; and the wisdom, philanthropy and good nature of Benjamin Franklin, ever ready with a joke or a compromise, made the Constitution possible. When it came to adjusting the conflicting claims of the larger and smaller States and men like Luther Martin had left the Convention in disgust, despairing of a satisfactory accommodation, these two men, more than any others, brought that eventful session to a successful termination.

Three general plans of Government were proposed: one each by Hamilton, Randolph and Charles Pinckney. It was the desire of Hamilton and Randolph, whose plans were in the main quite similar, to do away with all Federal features in the Constitution and establish one strong, central and National Government. Both of these plans were rejected, and Hamilton's, which smacked somewhat more of a limited monarchy, was so especially distasteful and was so summarily rejected that he thought it best to refrain from any further expressions till near the close of the session, when he gave his hearty support to the Constitution as adopted, which embodied the principal features of the Pinckney plan. Although a silent member and but 26 years of age, Hamilton took high rank among the great men in that great body. He was a member of the "Committee on Style," which gave to the Constitution its present arrangement and splendid style. But, for learning, exhaustive reasoning and conscientious statesmanship, probably no one in that body was Madison's equal.

As soon as the Constitution had been adopted by the Convention, in September, 1787, and it had been sent to the various States to be ratified, before going into effect, it was received with the most bitter opposition. In New York, under the leadership of George Clinton, and probably, Aaron Burr, this feeling was intense; while in Virginia, the eloquent invective of Patrick Henry made the more enlightened friends of liberty tremble for the outcome. It was this condition of affairs in their own States that inspired Hamilton and Madison to give to the people through weekly and semi-weekly newspaper articles that splendid work of genius, the "Foederalist," which as an authoritative, contemporaneous treatise on the Constitution has no equal. Before the profound learning and irresistible logic of these two men, assisted in four or five articles by John Jay, all material opposition melted away and the Constitution was adopted. So highly did Mr. Jefferson appreciate the "Foederalist," that he selected it as the text book of the University of Virginia on Constitutional Law and as such it remains, and as such, I trust, will remain.

FOEDERALIST.

(1). General Introduction. (2). Argument in Favor of *Adoption of the Constitution*. (3). *Conclusion*.

Part I. Introduction—w. c.

(1). Importance of the Subject: (Consideration of the Constitution). (2). Obstacles to a Fair Consideration of the Constitution. (3). Necessity For a Fair Consideration.

1^a. *Importance of the Subject*.

1^b. It involves the existence of the Union, etc.

2^b. The safety and welfare of the States involved.

3^b. It will “decide whether societies of men are capable of establishing good Government from reflection and choice.”

2^a. *Obstacles to a Fair Consideration of Constitution*.

1^b. “The obvious interest of a certain class of men in every State to resist all changes that may diminish their power.”

2^b. “The perverted ambition of another class of men who will either hope to aggrandize themselves by the confusions of their country or flatter themselves with fairer prospects of elevation from a division into several Confederacies than under one Government.”

3^b. Because the Constitution affects so many particular interests.

4^b. Because it innovates upon too many local institutions.

3^a. *Necessity of a fair consideration of the Constitution*.

1^b. To prevent the obscuring of the main question by a torrent of passions.

3^b. To guard against all attempts to influence a decision

in a matter of so great importance by any impressions except those which result from the evidence of truth.

Part II. Argument in Favor of the Adoption of the Constitution—w. c.

(1). The utility of Union to political prosperity. (2). The insufficiency of the present Confederation to preserve the Union. (3). The necessity of a Government at least equally energetic with that of Constitution to preserve the Union. (4). The conformity of Constitution to the true principles of Republican Government. (5). Its analogy to the New York Constitution. (6). The additional security which its adoption will afford to Republican Government, to liberty and to property. w. c.

1^a. *The Utility of Union to Political Prosperity.*

(1). Introduction. (2). Argument.

1^b. Introduction—w. c.

1^c. Necessity to prove the utility of Union. (2). A general view of the utility of Union.

1^d. Because it is already being intimated that the thirteen States are of too great extent for any general system and that we must resort to distinct and separate Confederacies.

2^d. This doctrine may be gradually propagated.

3^d. The reasons for *adopting* a Union argue for a *preservation* of that Union *now*.

2^c. A general view of the utility of the Union.

(1). A doctrine until lately unquestioned. (2). The natural and physical inducements to Union. (3). Our past history shows the appreciation of the people of the utility of Union.

1^d. A doctrine till now unquestioned.

2^d. The natural inducements to Union.

1^e. The character of the country (soil, rivers, etc.)

2^e. The character of the people.

3^e. The association of the people as one nation during a long and bloody war.

3^d. Our past history shows appreciation, etc.

(1). From the adoption at an early date of the Articles of Confederation. (2). From their convening, "as with one voice," the late convention at Philadelphia.

1°. From the adoption at an early date of the Articles of Confederation.

1^f. Proved defective by experience.

2^f. Causes of defects in the Articles.

1^s. Formed by men comparatively inexperienced.

2^s. Formed during times of bloodshed and excitement.

3^s. No sufficient opportunity for calm and mature reflection.

2°. From their convening, "as with one voice," the late Convention of Philadelphia.

1^f. Object of that Convention.

2^f. Character of that Convention.

1^s. Composed of wise, patriotic and tried men possessing confidence of the people.

2^s. Many of the members of former Convention were in this Convention.

3^s. They sat in the "mild season of peace."

4^s. With minds unoccupied by other subjects.

5^s. They deliberated daily for many months.

6^s. They were unanimous in presenting the Constitution.

2^b. Argument for the utility of the Union.

(1). The several instances of the utility of the Union.

(2). Reply to the objection that the extent of territory is too great for one general Government.

1°. The several instances of the utility of the Union—
w. c.

(1). As a security against foreign arms and influence.

(2). To prevent dissensions among the States. (3). In our commercial relations. (4). In establishing a navy.

(5). As a barrier against domestic faction and insurrection. (6). In respect to revenue. (7). In the greater economy in the administration of the Government.

1^d. As a security against foreign arms and influence.

(1). In the case of just wars. (2). Unjust wars.

1^e. As a security against foreign arms and influence in the case of just wars.

(1). Through a removal of the causes. (2). From the greater ability to settle amicably such causes.

1^f. Through a removal of the usual causes of a just war.

(1). Violations of treaties. (2). Direct violence.

1^g. Removal of causes resulting from violations of treaties.

1^h. By securing a better administration of Government. (p. 13.)

2^h. By the employment of better men.

1^j. More general and extensive reputation for ability and integrity will be required.

2^j. There will be a wider field for choice.

3^h. By an uniform interpretation of treaties.

1^j. Because of a single tribunal under the general Government.

2^j. Because of singleness of interest.

3^j. Because there will be wanting the bias of local interest.

4^h. By avoiding the local Temptations to bad Faith to which a single State may yield.

5^h. By avoiding local Prejudices of a single State.

2^g. Direct Violence (2d cause of just war).

1^h. Experience of the past shows *that several Indian wars* were caused by individual States and not one by the Federal Government.

2^h. The neighborhood of Spanish and British territory bordering on some States—just apprehension for the future. (p. 15.)

2^f. Through the greater ability it will afford to settle amicably the causes of just war.

1^g. In the absence of local Pride and Prejudice.

2^g. In the greater strength of Union.

2^e. Through a security against Foreign Arms and Influence in the case of Unjust Wars—w. c.

(1). Causes of unjust wars. (2). Instances wherein Union would afford greater security in this respect.

1^f. Causes of Unjust Wars.

(1). In general. (2). In case of States.

2^g. Causes, etc., in general.

1^h. Affecting absolute Sovereigns.

1^j. Thirst for Military Glory.

2^j. Revenge for personal affronts.

3^j. To aggrandize their Families and Partisans.

2^h. Causes affecting Nations and particularly the States.

1^j. From the ambition of influential men.

2^j. Those growing out of Situation and Circumstances.

1^k. The States are rivals with France and Britain in Fisheries.

2^k. The States are the rivals of Spain, Britain and others in the Navigation and Carrying Trade. (p. 19).

3^k. Their rivals in the trade to India and China.

2^f. Instances wherein Union would afford greater security against Unjust Wars. (Fed. p. 19 and seq.).

1^g. One general Government can avail itself of the ablest men in every part of the Union.

2^g. It can move on uniform principles of policy.

3^g. It can apply the Resources of the Whole to Protection of a Part.

4^g. The Militia will be more efficient.

5^g. It can establish a strong navy.

2^d. The utility of the Union as a security against Dissensions among the States themselves—w. c.

(1). The danger of hostilities arising between independent, unconnected and neighboring sovereignties. (2). Certain objections of anti-constitutionists. (3). The inducements the disunited States would have

to make war on each other. (4). The consequences of inter-state hostilities—w. c.

1^e. The Danger of Hostilities arising between independent, unconnected and neighboring Sovereignities

1^f. Through love of Power.

2^f. Through jealousy of Power.

3^f. Through competition of commerce.

4^f. Through the Passions and Influences of Individuals—illustrated from history. (pp 29–30).

1^g. *Pericles, to gratify the resentment of Aspasia, attacks and destroys the city of the Samnians.*

2^g. *Pericles, (1) stimulated by private pique against the Megarensians or (2) to avoid prosecution for a supposed theft of statuary of Phidias, (3) or to avoid a prosecution for dissipating public funds, was the primitive author of the Peloponnesian war.*

3^g. Cardinal Wolsey, aspiring to be Pope and to secure the influence of Charles V, plunged England into a war with France.

4^g. Shays, being a *desperate debtor*, plunged Massachusetts into a civil war.

2^e. Certain objections of anti-Constitutionists answered.

(1) The objections stated and (2) answered.

1^f. The objections stated.

1^g. "The genius of Republics is Pacific."

2^g. "The spirit of commerce tends to Peace."

3^g. "Commercial Republics will never be disposed to so far forget interest as to engage in wars."

2^f. The objections answered.

1^g. It is the interest of *all* nations to cultivate peace.

2^g. Republics are administered by men, as Monarchies, and are subject to rage, jealousy, etc.

3^g. History appealed to.

1^h. Republics have been warlike.

1^k. Sparta.

2^k. Athens.

3^k. Rome.

4^k. Carthage.

5^k. Venice.

6^k. Holland.

2^h. Commercial Republics have been warlike.

1^k. Athens.

2^k. Carthage.

3^k. Venice.

4^k. Holland.

3^o. The inducements which the disunited States would have to make war on each other. (p. 34).

(1). General causes. (2). Particular causes.

1^f. General Causes.

The same that have produced wars elsewhere.

2^f. Particular Causes—w. c.

(1). Unadjusted territorial disputes. (2). Commercial rivalry. (3). The existing debts of the Confederacy. (4). Local laws violative of private contracts. (5). Alliances between individual States and foreign powers.

1^s. Unadjusted Territorial Disputes—w. c.

(1). The nature of such disputes. (2). Arguments of the disputants. (3). Example of past territorial disputes.

1^h. The Nature of such Disputes—w. c.

(1). They will arise out of the "Crown Lands."

(2). The Western lands, etc. (3). In regard to apportionment.

1^k. Those arising out of claims to Crown Lands.

2^k. Those arising out of claims to Western territory.

2^h. Arguments of the disputing States.

1^k. Those claiming *Crown Lands*.

(1) "They are *ours* because they were in the limits of our State under the colonial Government."

(2) "No, they are *the proportionate prop-*

property of all because the rights of the Crown devolved on the Union."

2^k. Those claiming Western lands (which are by cession or anterior right the property of the Union).

(1) The ceding States: "They are ours by *reversion*."

(2) The others: "No, we are all entitled to a proportionate share, *for a grant once made can never be revoked*."

3^k. In regard to apportionment.

If, contrary to probability, all the States should admit that each was entitled to a share of these lands, then trouble would result as to proper rule of apportionment.

3^h. Examples of past territorial disputes.

1^k. Dispute between Connecticut and Pennsylvania over Wyoming lands.

2^k. Dispute between New York and Vermont.

2^g. Commercial Rivalry.

(1) Causes. (2) Illustrated by New York, Connecticut and New Jersey.

1^h. Causes.

1^j. Jealousy of States whose locality is not favorable to commerce. (p. 37.)

2^j. From the different systems of commercial polity.

2^h. Illustrated by New York, Connecticut and New Jersey.

New York from her situation and for revenue lays duties on imports; New Jersey and Connecticut become jealous.

3^g. The existing debt of the Confederacy.

1^h. The Difficulties of a proper *Apportionment*.

2^h. The Difficulties of a proper *Extinguishment*.

4^g. Local Laws violative of Private Contracts.

E. g. The enormities of the Legislature of Rhode Island and retaliation of Connecticut.

5^g. Incompatible Alliances.

4°. The Consequences of inter-state Hostilities.

(1). The primary, and (2). The ultimate consequences.

1^f. The primary consequences of inter-state Hostilities: Sudden conquests, rapid desolation.

2^f. The ultimate consequences of inter-state Hostilities.

1^g. Standing Armies.

2^g. A strong executive—Monarchy.

3^g. The elevation of the Military over the Civil Power.

(p. 47).

3^d. The utility of Union as a Barrier to domestic Faction, etc.

(1), The nature of a faction. (2). Liability of Republics to factions. (3). Advantages of a Confederacy in cases of Factions. (4). Modes of curing mischiefs of factions—w. c.

1°. The Nature of Factions. (p. 56).

"A Faction is a number of citizens, whether amounting to a majority or minority of the whole, who are actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens or the permanent and aggregate interests of the community."

2°. Liability of Republics to Faction.

(1). Illustrated from history. (2). This tendency furnishes arguments for advocates of despotism.

1^f. Illustrated from History.

1^g. The Grecian Republic.

2^g. The Italian Republic.

2^f. This Tendency An Argument for Advocates of Despotism.

3°. The advantages of a Confederacy in cases of Faction—w. c.

(1). Montesquieu's Views. (2). Nature of a Confederacy.

1^f. Montesquieu's Views.

1) As represented by opponents of the Constitution, and (2) as they are.

1^s. Montesquieu's views as represented :

That he argues against *an extended territory for a Republican Government* and a general union of States. The standards he had in view were smaller than most of the States.

Consequences of an adoption of this view.

(1) Either a division of each of these States, or (2) Taking refuge in the arms of monarchy.

2^s. Montesquieu's views as they are.

He explicitly treats of a Confederate Republic as expedient for extending the sphere of popular government and reconciling the advantages of Monarchy with those of Republicanism. He defines a Confederate Republic to be "a convention by which "several smaller States agree to become members of "a larger one which they intend to form. It is a "kind of assemblage of societies, that constitute a "new one, capable of increasing by new associations, till they arrive to such a degree of power as "to be able to provide for the security of the united "body."

2^f. Nature of a Confederacy.

(1) Distinction between a Confederacy and a Consolidation of the States. (2) Confederate Republic defined. (3) Nature of Lycian Confederacy—w. c.

1^s. Distinction between a Confederacy and a Consolidation of the States. (p. 53.)

A distinction between the two, more subtle than accurate, has been drawn.

The essentials of the first *are said to be*

(1) The restriction of its authority to the members in their corporate capacity ;

(2) No concern in internal matters ;

(3) An exact equality of suffrage.

These positions *in reality* are

(1) Arbitrary ;

(2) Unsupported by principal or precedent. ;

(3) The principles contended for are the cause of disorder and imbecility in Government.

2^s. The Confederate Republic defined.

An assemblage of societies or an assemblage of two or more States into one State. It will exist as long as (1) the members have separate organizations, and (2) exist by constitutional necessity for local purposes.

3^s. Nature of the Lycian Confederacy.

(1) It consisted of twenty-three cities or Republics: the largest had each three votes in the common council, the next had two and the smallest one; (2) the common council appointed all the judges and magistrates of cities.

1^h. Montesquieu takes this as a "model of an excellent Confederate Republic."

2^h. Yet its members had unequal suffrage

3^h. And did not regulate their internal affairs (appointing judges, etc).

4^s. Modes of Curing the Mischiefs of Faction.

(1) By removing its cause. (2) By controlling its effects—w. c.

1^f. By removing its cause.

(1). By destroying the liberty of the people. (2). By causing every citizen to possess the same opinions.

1^s. By destroying liberty of the people.

Unwise.

2^s. By causing every citizen to have the same passion, interests and opinions.

Impracticable.

2^f. By controlling its effects.

(1) The necessity of faction. (2) The modes of controlling effects of faction.

1^s. The Necessity of Faction. (Foed., pp. 57–8–9.)

Faction must, to some extent, exist in every free government.

2^s. The modes of controlling the effects.

(1) When a minority. (2) When a majority.

1^h. When a minority.

By regular vote.

2^h When a majority.

(1) By preventing the existence of the same passions or interests in the majority at the same time—or (2) they must be rendered unable to concert by their number and local situation.

1^j. By preventing the existence of the same passions or interests in the majority.

2^j. The majority must be rendered unable to concert by their number and local situation.

(1) The utility of a Democracy in accomplishing this object. (2). The utility of a Republic.

1^k. The utility of a Democracy, etc.

A *Democracy*, which is a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction.

2^k. Utility of a Republic, etc.

(1). Nature of a Republic. (2). Differences between a Republic and a Democracy. (3). Advantage of a large over a small Republic in curing faction.

1^l. Nature of a Republic.

A government in which the scheme of representation takes place.

2^l. Differences between a Republic and a Democracy.

(1). The delegation of the Government in a Republic to a small number of citizens elected by the rest. (2). The greater number of citizens and the greater sphere of country over which it extends—w. c.

1^m. The Delegation of the Government in a Republic to a small number of citizens elected by the rest. (p. 61).

(1). Effect of this difference. (2). A large Republic will be most favorable to election of proper guardians of the public weal.

1ⁿ. Effect of the Delegation of Government, etc.

- 1°. To refine and enlarge the public views by passing them through the medium of a chosen body of citizens.
- 2°. Or *contra*, men of factious tempers and sinister designs may, by intrigue or corruption, obtain the suffrages and betray the interests of the people.
- 2^a. Large Republics will be most favorable to election of proper Guardians of Public Weal.
 - 1°. *From Greater Probability of a Fit Choice.* However small the Republic, the Representatives must be raised to a certain number to *guard against the cabals of a few*; and *however large* it may be they must be *limited* to a certain number to guard against the confusion of a multitude. Hence the ratio of Representatives to the people being less in a large Republic there will be greater option.
 - 2°. From the greater difficulty of unworthy candidates practicing successfully their vicious arts, each Representative being chosen by a larger number.
- 2^m. The greater number of cities and greater sphere of country over which a large Republic may extend.
 - 1°. The smaller the society the fewer distinct parties and interests.
 - 2°. The fewer distinct parties and interests the more frequently will the same party have a majority.
 - 3°. The smaller the number of persons in majority the smaller their compass.
 - 4°. Smaller their compass the greater ease of concert and execution of plans.
- 3^l. Advantage of a large over a small Republic in curing the mischiefs of factions.
The same a Republic has over a Democracy.

4^d. Utility of the Union in our commercial relations with foreign States and among the States.

(1). Utility of the Union in our commercial relations with foreign States. (2). Among the States.

1^e. Utility of the Union in our commercial relations with foreign States—w. c.

(1) Advantages of union, and (2) disadvantages of disunion.

1^f. Advantages of Union in this respect.

(1). In regard to commercial treaties. (2). In securing the benefits arising from our own markets.

(3). In establishing a federal navy.

2^f. Disadvantages of Disunion in this respect.

(1). The rivalry of the different States would frustrate all natural advantages of commerce. (2). It would become the prey of nations at war with each other. (3). It would invite foreign nations to interfere with commercial rights acquired under the Union. (a) in the fisheries; (b) in the navigation of the lakes, and (c) of the Mississippi river.

2^e. Utility of the Union in Commercial Relations among the States.

Commercial enterprise will have much greater scope from the diversity in the productions of different States. Variety as well as value of products for exportation contributes to the activity of foreign commerce.

5^d. Utility of the Union in establishing a Navy.

The Union could command the resources of all the States; the sailors of the Northern States; tar, pitch and turpentine and wood from the South; iron from the Southern and Middle States. (p. 73-79).

6^d. Utility of the Union in respect of Revenue.

(1). Necessity for revenue. (2). How raised (i. e., principally by indirect taxation).

1^e. Necessity for Revenue. (p. 79).

A nation cannot long exist without it.

2^e. Methods of Raising Revenue.

1). By direct taxation. (2). By indirect taxation.

1^f. By Direct Taxation.

This method not desirable. (1). Experience of this method. (2). Its disadvantages.

1^g. Experience of raising Revenue by Direct Taxation.

(1). In America. (2). In Great Britain.

2^g. Its Disadvantages.

(1). In case of personal and (2) of real property.

1^h. In case of Personal Property.

Too precarious and invisible to be so reached.

2^h. In case of Real Property.

They will reluctantly yield scanty supplies.

2^f. Raising Revenue by Indirect Taxation.1^g. This the only Feasible Mode.

Follows from the disadvantages of *the direct tax*.

2^g. Advantages of a Union in Raising Revenue by Indirect Taxation.

(1). By increasing commerce. (2). By preventing smuggling.

1^h. By Increasing Commerce.

1^j. As commerce flourishes lands advance in value.

2^j. Increases the value of products by giving a freer vent to trade.

3^j. It contributes to the quantity of money and to its rapidity of circulation.

2^h. By preventing smuggling.

(1). Opportunities for. (2). Consequences.

1^j. Opportunities for smuggling.1^k. In case of the Union.

There will be only one side—the Atlantic coast—to guard, and the Government would have the same interest to provide against smuggling everywhere, and would have a strong navy to prevent it.

2^k. In case of Disunion.

1^l. From the relative situation of the States.

2^d. From the affinity of language and manners.

3^d. From the familiar habits of intercourse.

4^d. Mutual jealousy would make duties low in order to discourage smuggling and thus destroy revenue.

5^d. An army of patrols would be necessary on every border line.

2^d. Consequences of smuggling.

Attempts to prevent it would cause greater expense from the greater necessity of patrols, while smuggling lessens the Government revenues.

7^d. Utility of the Union in the greater economy in the administration of the Government.

1^o. There will be but one civil national list to support.

2^o. There will be no necessity of internal patrols for collecting revenue.

3^o. Large military establishments prevented.

2^o. Reply to Objection that the Extent of Territory is Too Great for one General Government.

(1). Extent of territory required in a Democracy and Republic respectively. (2). Conformity of the United States to this standard. (3). Certain considerations in advocacy of present extent of territory.

1^d. The Extent of Territory Required in a Democracy and Republic.

1^o. In a Democracy.

(a) Of such extent that the *most remote citizens* may conveniently assemble for transaction of public affairs, and (b) will include no greater number than can join in those affairs.

2^o. In a Republic.

Of such extent that the *representatives* may meet at the Capital as often as may be necessary for administration of public affairs.

2^d. Conformity of United States to this Requirement.

(1). Its exact extent. (2). As compared to Great Britain.

1°. Its exact extent.

1^f. From East to West.

From the Atlantic to the Mississippi, about 750 miles.

2^f. From North to South.

(a). Between 31° and $45^{\circ} = 14^{\circ}$

(b). Between 31° and $42^{\circ} = 11^{\circ}$

Average about $12\frac{1}{2}^{\circ} =$ about 868 miles.

2°. Conformity of United States, etc., as compared with Great Britain, etc.

1^f. As compared with Germany, very little larger.

2^f. As compared with Poland, very little larger.

3^f. As compared with Great Britain. Representatives from North Scotland have as far to travel to Parliament as Representatives would in this country.

3^d. Certain Considerations in Advocacy of the present extent of the Union.

1°. The general Government's Jurisdiction is restricted to certain general and enumerated objects.

2°. To secure the Union of the Thirteen States and to form new ones.

3°. Intercourse throughout the Union will be daily facilitated by roads, canals, etc.

4°. Almost every State will have a frontier to guard and thus would find it expedient to sacrifice any supposed inconvenience from the extent of territory to their own safety.

2^a. *The Insufficiency of the Present Confederation to Preserve the Union.*

1^b. Its Insufficiency Not Controverted.

2^b. Consequences of its Insufficiency—(p. 93).

3^b. Necessity for Proof of Its Insufficiency.

While it is admitted that the present Government is destitute of energy, the powers requisite for supplying that energy are denied.

4^b. The Several Defects of the Confederation.

(1). The legislation for States in their corporate

capacity. (2). The total want of a sanction to its laws. (3). The want of a mutual guaranty of the State Governments. (4). Regulating contributions of the States by quotas. (5). Want of a power to regulate commerce. (6). Raising troops by quotas. (7). Equal suffrage among the States in Congress. (8). The want of a judiciary power. (9). The organization of Congress utterly improper for exercising the powers necessary to a Federal Union. (10). The Confederation was never ratified by the people—w. c. (p. 90.)

1°. First Defect. Legislation for States in their corporate capacity.

(1). Consequences of this and other defects. (2). The nature of Government and the necessity for it. (3). The modes of enforcing Government—w. c.

1^d. Consequences of This and Other Defects.

1°. Consequences of This Defect in Particular.

Though the Congressional resolutions are *in theory* constitutionally binding and they may make indefinite requisitions for men or money, *in practice* they are mere recommendations which the States observe or disregard at pleasure.

2°. Consequences of This and Other Defects in General.

1^f. Inability to pay foreign debts contracted in a time of imminent peril.

2^f. Possession of important posts by foreign powers.

3^f. We have no troops, treasury or Government.

4^f. Exclusion from Navigation of Mississippi river.

5^f. No Public Credit. (p. 92).

6^f. No Public Commerce. (p. 92).

7^f. Violent Decrease in Value of Lands.

8^f. Want of Private Credit and Confidence. (p. 92).

2^d. The Nature of Government and the Necessity for it.

1°. The Nature of Government.

1ⁱ. Government implies the *power of making laws*.

2^f. A Law implies a Sanction.

2^o. The Necessity for Government.

Because the passions of men will not conform to the dictates of reason and justice without constraint. States are less influenced by these dictates of reason and justice because:

(1) Regard to reputation has less influence when the infamy of a bad action is to be divided among a number

(2) A spirit of faction will often hurry bodies of men into excesses of which, in a private capacity, they would not be guilty.

3^d. The Modes of Enforcing Government.

(1) Through a coercion of arms. (2). Through coercion of the magistracy.

1^o. Through a Coercion of Arms. (p. 101).

(1). Results of the employment of this mode.

(2). Its impracticability.

1^o. Results of the Employment of this Mode.

1^s. Constant Inter-State Wars.

2^s. Foreign Alliances.

3^s. Death of the Confederacy.

4^s. A Military Despotism.

2^f. The Impracticability.

1^s. It is not probable, considering the genius of the country, that the complying States would be often inclined to support the Union in a war against the non-complying States.

2^s. There would be great difficulty in determining when force could be used with propriety—it would often be impossible to determine whether delinquency proceeded from inability or disinclination.

3^s. The resources of the Union would be insufficient to sustain an army large enough to keep the larger States within the limits of their duty.

2^o. Through Coercion of the Magistracy.

(1). Advantages of this method. (2). Objections answered.

1^f. Advantages of this Method.

It results from the observations under (1^a) that the enforcement of laws by coercion of arms would be disastrous if not impracticable, and hence it is only through the magistracy that the laws can be enforced—by extending the authority of the Government to individuals and not restricting it to States.

2^f. Objections to the Government's Employing the Coercion of the Magistracy answered.

1^s. "That any disaffected State could at any Time Obstruct the Execution of the Laws in this Method as in the other."

1^h. When the Government acts on States and not on individuals and the consent of a State Legislature is necessary to carry out the Government's plans, mere *non-compliance, inaction or evasion* will defeat those plans.

2^h. When the Government acts on individuals no evasions or omissions would answer. To resist the Government in this case they must act positively. The success of such resistance would depend on the concurrence of a majority of the Legislature, on the Courts of Justice and on the People. (p. 105).

2^s. "That individuals, more or less numerous, may still obstruct the Government."

1. As to those *partial commotions* which do not affect the great body of the community, the general Government would possess greater resources to suppress them than any single State.

2. As to those mortal feuds which spread conflagration through a whole nation, they do not fall within any ordinary rules of calculation. No form of Government can always either avoid or control them.

3^s. "That the Reserved Rights of the States would be invaded by the General Government."

1^h. No Competent Inducement.

The ambitious officers of the Government would find ample fields for exercise of their ambition in

commerce, war, negotiation and finance, which are all given to the Government.

2^h. The People through the House of Representatives could prevent it.

3^h. There is greater danger that the delegated authority of the General Government will be invaded by State Governments.

1^j. The State Governments will possess a greater degree of influence over the people.

1^k. On account of that diffusive and general construction and General Government.

2^k. From the nature of the objects to which the State Governments would be directed.

E. g., In the ordinary administration of civil and criminal justice.

2^j. Illustrated from History.

(1). Illustrated by Feudal System. (2). The Clans of Scotland. (3). The Amphictyonic League. (4). The Achaean League. (5). The Germanic League. (6). The History of Poland. (7). Switzerland. (8). United Netherlands.

1^k. Tendency of States to despoil the General Government, illustrated from the History of the Feudal System.

(1). Their similarity to Confederacies. (2). The result of this system.

1^l. Their Similarity to Confederacies.

There were a common head and subordinate barons, who were sovereign in their respective territories.

2^l. The Result of this System.

Continual opposition to the sovereign and frequent wars between the barons.

2^k. Illustrated by the History of the Clans of Scotland.

The spirit of clanship uniting the nobles and their dependants made the aristocracy a constant overmatch for the monarch, until the in-

corporation with England under a more energetic Government.

3^k. Illustrated by the History of the Amphictyonic League.

(1). Its similarity to the American Confederation. (2). Result.

1^l. Its Similarity to the American Confederation under the Articles of Confederation.

1^m. The several States were sovereign and had an equal vote in the Common Council.

2^m. The Council had authority to declare war.

3^m. To fine members.

4^m. To admit new members.

5^m. To decide in the last resort all controversies between the States.

2^l. Result of this form of Government.

1^m. The more powerful members tyrannized over the rest.

E. g., Athens was arbiter of Greece 73 years; Lacedaemonia was arbiter of Greece 29 years; Thebes next held sway.

2^m. In wars with Persia and Macedon the members never acted in concert.

3^m. When not at war with foreigners internal dissensions ensued.

E. g., The Phocians ploughed up some consecrated ground belonging to the temple of Apollo. The Amphictyonic Council imposed a fine. The Phocians at instigation of Athens and Sparta refused to submit. Thebes and others tried to enforce it and invited Philip of Macedon. He bribed his way into the league and became its master.

4^k. Illustrated by the History of the Achaean League.

(1 . Its composition. (2). Results.

1^l. Composition of Achaean League.

1^m. Powers of cities composing the League.

1^a. They retained their municipal jurisdiction.

2^a. Appointed their own officers.

3^a. They enjoyed perfect equality.

2^m. Powers of the General Government or League.

Exercised through a Senate.

1^a. The sole and exclusive right of peace and war.

2^a. The sole and exclusive right of sending and receiving ambassadors.

3^a. Of making treaties and alliances.

4^a. Of appointing a Praetor or Chief Magistrate.

(1). Praetor commanded the armies.

(2). By the advice and consent of ten Senators administering the government in the recess of the Senate.

(3). Had a share in its deliberation when it was assembled.

2^l. Results of the Form of Government under the Achaean League.

1^m. As well after the renovation of the League by Aratus as before its dissolution by the art of Macedon there was infinitely

(1) More moderation and justice in its Government; and

(2) Less violence and sedition among people than were to be found in any of the cities exercising *singly* all the prerogatives of sovereignty.

2^m. Through jealousy of their power.

(1). The successors of Alexander and Philip practiced divisions among them. Some of the cities fell under Macedonian power and others under local tyrants.

(2). The Achaean League reunited, but was defeated through jealousy of Sparta and Athens.

3^k. Illustrated from the History of the Germanic
 (1). Origin of the League. (2). Its composition. (3). Results in the case of this League.

1^l. Origin of the Germanic League.

Formerly Germany was inhabited by seven distinct and independent nations; one of these, the Franks, conquered France and under Charlemagne in the ninth century, conquered Germany and established the empire. On the dismemberment under his sons, Germany became a separate and independent empire. The principal vassals gradually threw off the yoke. Out of this feudal system has grown the Federal System, which constitutes the Germanic Empire.

2^l. The Composition of the Germanic League.

(1). The governmental functions—how vested.
 (2). The powers of the Diet. (3). Restrictions on the States. (4). The powers of the Emperor.

1^m. The Government Functions, how vested.

1ⁿ. In a Diet, representing the members of the Confederacy.

2ⁿ. In the Emperor—the executive.

3ⁿ. In the Imperial Chamber and Aulic council.

2^m. The Powers of the Diet.

1ⁿ. The general power of legislating for the Empire.

2ⁿ. To make war and peace.

3ⁿ. To contract alliances. (p. 121).

4ⁿ. To assess quotas of troops and money.

5ⁿ. To construct fortresses.

6ⁿ. To regulate coin.

7ⁿ. To admit new members.

8ⁿ. To subject disobedient members to ban of empire.

3^m. Restrictions on the States.

1ⁿ. To make treaties contrary to the good of the Empire.

- 2ⁿ. To impose tolls on inter-State commerce with the consent of the Emperor and Diet.
- 3ⁿ. To alter the value of money.
- 4ⁿ. To do injustice to another.
- 5ⁿ. To afford refuge to disturbers of the public peace.
- 4^m. The powers of the Emperor.
 - 1ⁿ. To make propositions to the Diet.
 - 2ⁿ. To veto resolutions of the Diet.
 - 3ⁿ. To nominate ambassadors.
 - 4ⁿ. To confer dignities and titles.
 - 5ⁿ. To fill vacant electorates.
 - 6ⁿ. To found universities.
 - 7ⁿ. To grant privileges not injurious to the empire.
 - 8ⁿ. To receive and apply the public funds.
 - 9ⁿ. To watch over the public safety.
- 3^l. Results of the Form of Government under the Germanic League.
 - 1^m. Wars between the Emperor and the State.
 In the sixteenth century the Emperor and one part of the empire were arrayed against the other States, and once the Emperor was put to flight by the Elector of Saxony.
 - 2^m. Wars between the States themselves.
 E. g., Thirty Years War.
 - 3^m. This disjointed machine barely holds together and that (1) because of the fear the principal component States have of the surrounding Nations; (2) from the obvious interests and pride of the Emperor.
- 6^k. Illustrated from the History of Poland.
 - 1^l. The composition of the Polish Government.
 A government over local sovereigns.
 - 2^l. Results of this Form of Government in Poland.
 Unfit for government or self-defence, it was dismembered.

7^k. Illustrated from the History of the Swiss Cantons.

1^l. The composition of their Government.

(1). Their Government not a Confederacy.

(2). Reasons for its duration.

1^m. The Government of the Swiss Cantons not a Confederacy.

1ⁿ. There is no common treasury.

2ⁿ. No common Judicatory.

3ⁿ. No common troops.

4ⁿ. No common coin.

5ⁿ. No other work of sovereignty.

2^m. Reasons for its duration. (p. 125)

1ⁿ. Topographical position.

2ⁿ. Weakness and insignificance.

2^l. Results of this form of Government of the Swiss cantons.

1^m. In ordinary cases.

Very satisfactory.

2^m. In cases of dispute or real trial.

Proved a failure. Result has been three bloody religious wars. Protestant and Catholic cantons have separate Diets; counter leagues with foreign States.

8^k. Illustrated from the History of the United Netherlands or Belgic Confederation.

(1). Composition of the Government. (2). Results.

1^l. Composition of the Government.

(1). Its origin and general nature. (2). In what authorities vested. (3). Powers of each.

(4). Restrictions on States.

1^m. Origin and general nature.

A confederacy of seven co-equal and sovereign States; each State is composed of equal and independent cities. In all important cases the States, provinces and cities must be unanimous.

2^m. The Government of United Netherlands—in what authorities vested.

1ⁿ. The States General.

They represent the sovereignty of the Republic and consist of about fifty delegates appointed by States, some for one, some for two, three and six years, for life and for pleasure.

2ⁿ. The Stadtholder.

Chief executive, a hereditary Prince; salary 300,000 florins.

3^m. Powers of these several authorities.

1ⁿ. Of the States General.

1°. To make treaties.

2°. To make war and peace.

3°. To raise armies and equip fleets.

4°. To ascertain quotas and demand contributions, *provided*, they *unanimously agree* and have the consent of their constituents.

2ⁿ. Of the Stadtholder.

1°. He is a hereditary Prince.

2°. Is Stadtholder in each State and for the Union.

1^p. Powers as Stadtholder in each State or Province.

1^q. He appoints town magistrates.

2^q. Executes provincial decrees.

3^q. Presides, at pleasure, in the provincial tribunal.

4^q. Has power of pardon.

2^p. Powers as Stadtholder for the Union.

1^q. Commander-in-Chief of the armies.

2^q. Admiral general of the navy.

4^m. Restrictions on the States or members of the United Netherlands.

1ⁿ. They are not allowed, except by general consent, to make foreign treaties.

- 2^a. From establishing imposts injurious to each other.
- 3^a. From charging their neighbors higher duties than their subjects.
- 2^l. Results under the Government of United Netherlands.
 - 1^m. Imbecility in the Government; discord among the Provinces.
 - 2^m. Deficiencies in quotas are often collected at the point of the bayonet.
 - 3^m. Foreign ministers elude matters taken *ad referendum*, by tampering with the provinces and cities, e g. In 1726 the treaty of Hanover was so delayed a whole year.
 - 4^m. In critical emergencies the States General must often over-leap the Constitution. (p. 132).
- 2^c. Second defect in the Articles of Confederation. Total want of a sanction to its laws.
 - 1^d Nature of a Sanction.
 - It prescribes the punishment for disobedience.
 - 2^d. Power of enforcing laws not given to the Government.
 - 1^e. Such a power not *expressly* given.
 - 2^e. The Articles of Confederation declare "Each State shall retain every power, jurisdiction and right not *expressly* delegated to the United States in Congress assembled.
 - 3^d. Consequences of this Defect.
 - The United States is a Government destitute of every *Constitutional means* of enforcing its laws.
- 3^c. Third defect in the Articles of Confederation: The want of a mutual guaranty of the State Governments.
 - (1) Nature of a Mutual Guaranty. (2) Consequences of this defect and (3) certain objections answered.
 - 1^d. Nature of a Mutual Guaranty of the State Governments.

It is an authority given to the general Government to protect the States from violent attempts to overthrow their State Governments.

2^d. Consequences of this Defect.

The Union can render no assistance in a State in repelling domestic dangers. E. g., Shay's Rebellion in Massachusetts.

3^d. Objection that this Mutual Guaranty will allow officious intermeddling on the part of the United States Government.

1°. This objection would deprive us of one of the greatest advantages of the Union.

2°. It proceeds from misapprehension of the provision.

3°. There will be little pretence for such interference in a Government where the whole power is in the people. (p. 135.)

4°. Fourth defect in the Articles of Confederation: Regulating Contributions to the Treasury by Quotas.

(1) Nature of this defect. (2) Consequences and (3) Remedy.

1^d. Nature of this defect.

There is no common standard or barometer by which the degrees of Constitutional wealth can be ascertained. (1) Neither the value of lands, nor (2) the numbers of the people, which have been proposed as the ratio of State contribution, is a just representative.

E. g., Compare Holland and Russia; Virginia and North Carolina.

2^d. Consequences.

1°. There can be no common measure of national wealth.

2°. Quotas are productive of glaring inequality and oppression.

3°. Such inequality would work the destruction of the Union.

3^d. Remedy for this Defect.

Is by allowing the National Union to raise its own

revenues in its own way, either by (1) direct, or (2) indirect taxation. (pp. 137-138).

1°. Power in the Government of Direct Taxation.

Apportionment according to the number of people. This is not the preferable mode.

2°. Power in the Government of Indirect Taxation.

(1). The amount to be contributed by each citizen will in great measure be at his own option.

(2). They contain in their own nature a security against excess.

If duties are too high, consumption is lessened and the revenue is lessened.

5°. Fifth Defect in the Articles of Confederation: The Want of a Power to Regulate Commerce.

1^d. The Utility of such a Power:

Foed., p. 139 and seq.

2^d. The Consequences of the Want of Such a Power.

(1) In our foreign relations. (2) In our domestic relations.

1°. In our Foreign Relations.

The want of such a power has prevented beneficial treaties with foreign nations. (p. 139).

E. g., Mr. Jenkinson's bill in the House of Commons.

2°. In our Domestic Relations.

1^f. Several States, by separate prohibitions, have attempted to influence Great Britain to favorable commercial treaties, but their plans have been frustrated from want of concert.

2^f. Interfering and unneighborly regulations.

E. g. Result in the case of the German Empire.

6°. Sixth Defect in Articles of Confederation: Raising contributions of Troops by Quotas.

(1). Result of the system of quotas in general and (2) in the war of Independence.

1^d. The result of the system of quotas in general.

A system of imbecility in the Union; inequality among States.

2^d. The Result of this system in the War of Independence. (p. 140.)

(1). Replete with obstructions to a vigorous and economic defence. (2) Unequal in its burdens on the States.

1^e. Replete with obstructions to a vigorous and economical defence.

1^f. Created an auction of men.

2^f. Bounties grew to an enormous size.

3^f. Men delayed enlisting to get a larger price and for short periods.

4^f. Slow and scanty levies and fluctuations in the troops.

5^f. Oppressive expedients for raising troops.

2^e. This system unequal in its burdens.

Especially unjust on the States near the seat of war.

7^e. Seventh Defect in Articles of Confederation: Equal Suffrage Among the States.

(1). Nature of this defect. (2). Certain objections answered.

1^d. Nature of This Defect.

1^e. Every idea of proportion and every rule of fair representation conspire to condemn a principle which gives equal votes to Rhode Island and New York.

2^e. It contradicts that fundamental maxim of Republican Government: "Let the majority rule."

2^d. Certain objections answered.

(1). "That Sovereigns are equal." (2). "That a two-thirds vote is required for the most important resolutions and two-thirds of the States contain a majority of the people."

(p. 142).

1^e. "That Sovereigns are equal and that a majority of the States are a majority of Confederate America."

1^f. This maxim is contrary to justice and common sense.

2^f. This maxim is false in fact.

E. g., 1, New Hampshire; 2, Rhode Island; 3, New

Jersey; 4, Delaware; 5, Georgia; 6, South Carolina; 7, Maryland, are a majority of States, but they do not contain one-third of the people.

2°. "That two-thirds of the States are required for the most important resolutions and that these two-thirds would be a majority."

1^f. This still allows the States an equal vote.

2^f. This statement false in fact.

E. g., New Hampshire, Rhode Island, South Carolina, Georgia, New Jersey, Maryland, Delaware, New York and Connecticut are two-thirds of the States and are less than a majority.

3^f. The mischiefs attending this rule.

(1). In the ordinary operations of the Government. (2) The danger of foreign corruption.

1^s. In the ordinary operations of the Government.

It gives a minority a negative upon the majority; one-sixtieth of the Union (Delaware and Rhode Island) has often been a bar to the operations of the Government.

2^s. From the danger of foreign corruption. (p.147).

1^h. This danger is one of the great weaknesses of Republics.

2^h. Foreigners would have only one-third to buy —in a majority one-half.

8°. Eighth Defect in the Articles of Confederation: Want of a Judiciary Power.

1^d. To give meaning and uniformity to the Laws and Treaties of the United States.

2^d. As a protection to the General Government against the States.

9°. Ninth Defect in Articles of Confederation: The Organization of Congress improper for the exercise of all the Functions of Government.

10°. Tenth Defect of Articles of Confederation: Never Ratified by the People.

(1). Nature of this defect. (2). Remedy.

1^d. Nature of this Defect.

The articles having been ratified by the Legislatures

of the States, it has been contended that the same authority might repeal the law ratifying them. (p. 149).

2^d. Remedy for This Defect.

The fabric of America's empire ought to rest on the solid basis of the *consent of the people*.

3^a. *The Necessity of a Government at Least Equally Energetic with the One Proposed to Preserve the Union.*

(1). The objects to be provided for by the Federal Government. (2). The persons on whom the power should operate. (3). The quantity of power necessary to the accomplishment of those objects.

1^b. The objects to be provided for by the Foederal Government.

1^c. The common defence of the members.

2^c. The Preservation of Public Peace as well as Against Internal Convulsions as External Attacks.

3^c. The regulation of Foreign and Domestic Commerce.

4^c. The superintendence of our intercourse, political and commercial, with foreign countries. (p. 150).

2^b. The persons on whom the Governmental powers should operate.

It was shown (Foed., p. 94 and seq.) that *legislation* for States in their *corporate capacity* was the *radical defect* of the Articles of Confederation; and that the Government could only operate successfully on *individuals*.

3^b. The Quantity of Powers in General Government Necessary to Accomplish the Objects of Union—w. c.

(1). In respect to common defence. (2). Taxation. (3). Regulating militia.

1^c. The quantity of powers in the General Government necessary to accomplish the objects of Union in respect to *common defence*.

(1). The several authorities necessary to the care of common defence. (2). The extent of those authorities and reasons therefor. (3). Certain objections thereto.

1^d. The several authorities necessary to the care of the common defence.

- 1°. To Raise Armies.
- 2°. To Build and Equip Fleets.
- 3°. To Prescribe Rules for Their Government.
- 4°. To Direct Their Operations.
- 5°. To Provide for Their Support. (p. 151).
- 2^d. The extent of those authorities and reasons therefor.
 - 1°. The Extent of Those Authorities.
They should exist without limitation.
 - 2°. Reasons for unlimited extent of those authorities
 - 1^f. Because it is impossible to foresee or define the extent and variety of national exigencies;
 - 2^f. Or to foresee the extent and variety of means necessary to satisfy those exigencies.
 - 3^f. This principle recognized in the Articles of Confederation.
 - 3^d. Certain objections to unlimited extent of authorities of Government in providing for common defence answered.
 - (1). "In tending to foster standing armies."
 - (2). "In not vesting these authorities in the State Governments." (3). "The proposed Government will require force."
 - 1°. "In tending to foster standing armies." (p. 156).
Objection answered.
 - (1). The source of this objection. (2). Objection answered.
 - 1^f. The source of this objection. (p. 170).
It comes from the jealousy which our English ancestors had of standing armies when the authorities for raising them was vested, *not in the legislature*, as under proposed Constitution, but *in the executive*, and from their failure to note the distinction between vesting this power in the executive and in the people's representatives.
 - 2^f. Objection Answered.
 - (1). The authorities for raising armies—where vested. (2). The safeguards provided by the vari-

ous State Constitutions by the Articles of Confederation and by the United States Constitution superiority of the latter. (3). The danger of fettering the Government in raising armies and necessity for such authority.

1^s. The Authorities for Raising Armies—where vested.

In the Legislature (Congress) and not in the President. (p. 156).

2^s. The safeguards provided by the various State Constitutions, by the Articles of Confederation and by the United States Constitution superiority of the latter.

1^h. The safeguards provided by various State Constitutions, by Articles of Confederation and by the United States Constitution.

1^j. By the Constitutions of the various States.

1^k. In Pennsylvania and North Carolina.

“Standing armies in time of peace *ought not* to be kept up.”

2^k. By the Constitutions of the remaining States.
No provision whatever.

2^j. Safeguards provided by the Articles of Confederation.

None whatever.

3^j. Safeguards provided by the United States Constitution.

By vesting *in Congress* the power to raise and support armies, “*but no appropriation of money to that use shall be for a longer term than two years.*”

2^h. The superiority of the safeguards provided by the United States Constitution.

(It is more than a parchment barrier—it takes away the *means* of keeping up an army). (p. 171.)

1^j. It causes the subject to be reconsidered every two years.

2^j. Schemes for subverting the liberties of the peo-

ple require more time for maturing than this provision allows. (p. 174).

3^s. The Danger of Fettering the Government in regard to Standing Armies and the necessity for such Authorities in the Government.

1^h. The Danger of Fettering the Government in regard to Standing Armies.

(1). As regards keeping up of standing armies.

(2). As regards raising armies.

1^j. As regards keeping up Standing Armies.

Because of the uncertainty of the period or extent of the danger to be guarded against.

2^j. As regards Raising Armies in times of Peace.

1^k. The United States would then exhibit the extraordinary spectacle of a nation incapacitated by her Constitution for preparing for defence before actually invaded. (p. 166).

2^k. She would be forced to depend on the militia which:

(1). Well nigh lost us our Independence.

(2). Which is *more expensive* than a regular army.

(3). *Less efficient* than a regular army.

2^h. The necessity for such authorities in the General Government.

1^j. Because of the danger from Indian, Spanish and English hostilities.

2^j. To provide a Navy for protecting our growing commerce.

3^j. In cases of internal violence.

1^k. Pennsylvania, notwithstanding her bill of rights, was forced to resort to an army to put down insurrection, and still keeps up the army. (p. 167).

2^k. Massachusetts, notwithstanding the Articles of Confederation, did the same.

2^o. Objection that "These Authorities for Raising Armies were not vested in the State Governments."

1^f. Such a doctrine would be a subversion of the

primary principle of Union—i. e., the protection of all through the Union—by transferring this protection to the individual and component members.

2^f. It would be oppressive to some States and too light on others.

3^f. It would become dangerous to all the States—through weakness of some, from the military establishments of others.

4^f. It would be dangerous to the Union.

3^o. Objection that “the proposed Government cannot be exercised without force” answered, (1) The proposed Government will be better administered than the State Governments, and will therefore have the popular confidence; (2) It will be less likely to require force than the present Government; (3) There may be times in all Governments when force must be used. (p. 176).-

1^f. The proposed Government will be better administered than the State Governments.

1^g. From the greater latitudes of choice in the selection of its officers.

2^g. From the peculiar care with which the President and Senate will be chosen.

3^g. Congress will be less exposed to the momentary whims of the people than the State Legislatures—being more intelligent and farther distant.

4^g. From the greater strength of the General Government. (p. 178).

2^f. The proposed Government is less likely to require force than the present Government, chiefly from its operation upon individuals instead of upon States, as in the case of the latter. (p. 180 and seq).

3^f. There may be Times when Force must be used.

1^g. Illustrations.

1^h Massachusetts and Pennsylvania under the Articles of Confederation.

2^h. If the thirteen States were divided into sev-

eral confederacies would not each be liable to the same casualty. (p. 183).

2^s. Safety of the people under the Proposed Government on such occasions.

1^h. Through their representatives in Congress, who regulate the force to be used.

2^h. Through the jealousy of the State Governments. (p. 185).

3^h. Through the great extent of the Union.

4^h. Through the impracticability of raising a Government force large enough to overrun the country.

2^e. The quantity of power in the General Government necessary to accomplish the objects of Union in respect of Taxation.

(1). The necessity for a power of taxation. (2). The extent of the power.

1^d. The Necessity for a Power of Taxation.

1^e. In General.

1^f. Prevents official plunder—such as exists in the Turkish Empire—from lack of this power.

2^f. Prevents that atrophy and dissolution of Government.

2^e. In Particular.

1^f. In providing for military operations and arrangements.

2^f. In providing support of the National Civil List.

3^f. In paying the National debts.

4^f. To meet any other exigencies.

2^d. The Extent of the Power of Taxation.

It may be (1) limited, or (2) unlimited.

1^e. Limited Powers of Taxation.

(1). Several ways in which the powers of taxation may be limited. (2). The effect of such limitations.

1^f. The Several Ways in which the Powers of Taxation may be limited.

(1). To external taxation. (2). Partly to exter-

mal and partly to requisitions. (3). To particular objects.

2^t. The Effect of Such Limitations.

1^s. In case of Limitations to External Taxation.

1^h. Violates the maxim, "Every power should be co-extensive with its objects;" the exigencies of the Government being incapable of limitation, the means of vesting them should be. (p. 189).

2^h. External taxation may be insufficient.

1^j. To supply present necessities.

2^j. Much more, to supply present necessities.

2^s. In case of Limitation partly to External Taxation and partly to Requisitions.

1^h. This is an Admission that External Taxation may not suffice.

2^h. It exposes the Government in case of a failure in external taxation to the evils of requisitions. (p. 135).

1^j. The General Effect of Requisitions. (p. 135).

2^j. The Effect of Requisitions in Time of War.

If external taxes should suffice for ordinary exigencies, requisitions must be resorted to in time of war.

1^k. Necessitates the diversion of funds already appropriated for other purposes to supply the pressing demands of war.

2^k. Will destroy public credit. (p. 191).

The means of the Government for paying her debts being so restricted loans will be hard to get and heavy to support.

3^s. In case of Limitation to Particular Objects.

(1). The oppression of particular branches of industry.

(2). Unequal distribution of taxes.

1^h. The Oppression of Particular Branches of Industry. (p. 216).

E. g., Consider the result of exorbitant duties on imported articles: *High Tariff*. (p. 216).

1^j. Smuggling.

2^j. They make "barons" of manufacturers.

3^j. They force industry out of its natural channels.

4^j. They often oppress the merchant.

5^j. They are more often oppressive to the consumers.

2^b. From an Unequal Distribution of Taxes.

The manufacturing States, in case of duties on imported articles, would contribute cash to the general revenue.

2^e. Unlimited Powers of Taxation.

(1). Advantages of unlimited powers. (2). Objections answered.

1^f. Advantages of Unlimited Powers of Taxation.

The limited powers being inadequate, the unlimited are necessary.

2^f. Certain Objections to Unlimited Powers of Taxation Answered.

(1) That "such powers would interfere with State levies;" (2) that the power of Congress "to make all laws which shall be necessary and proper for executing the powers vested in the Government by the Constitution" is improper; (3) that the clause of the Constitution, "*the Constitution and laws of the United States, made in pursuance thereof, shall be the Supreme law of the land,*" is objectionable.

1^g. That "Such Powers would Interfere with State Levies.

(1). The security against oppression by the Government in the matter of taxation; (2) the instances of exclusive powers vested in the Government; (3) the concurrent powers. (p. 198).

1^h. The Securities against Oppression by the General Government in the matter of Taxation.

1^j. The Sense of the People.

2^j. The State Governments.

3^j. The Conviction of the Utility of Local Administrations for Local Purposes.

2^h. The Three Instances of Exclusive Powers vested in the Government.

The present Government is only a Partial Union or Consolidation and the State Governments retain all the powers not exclusively granted to the General Government. (p. 199).

1^j. Where the Constitution in express terms granted an exclusive authority to the Government.

E. g., Art. I., §8: "Congress shall exercise exclusive legislation over the District of Columbia."

2^j. Where, in one place, the Constitution grants a Power to the Government and prohibits it, to the the States.

E. g., Art. F., § 8-1: "Congress shall have power to lay and collect duties, imposts and excises."

Art. I., §10-2: "No State shall, without consent of Congress, lay any imposts or duties on imports or exports, except for executing its inspection laws."

3^j. Where an authority is granted to the Union, to which the same authority in the States would be contradictory and repugnant.

E. g. "Congress shall have power to establish *uniform rules* of naturalization." (p. 200).

3^h. The Concurrent Power—e. g., that of Taxation on Articles other than Exports and Imports.

1^j. This power has not been exclusively granted to the Government.

2^j. It has not been prohibited to the States.

3^j. The restraint upon the States in relation to imports is an admission.

(1). That if this power had not been inserted it would have resident in the States;

(2). That, as to all other taxes, the authority of the States is undiminished.

4^j. It is not repugnant.

- 5^j. Concurrent jurisdiction in certain cases results from the division of the Sovereign Power between the State and Foederal Governments.
- 6^j. Art. I., §10, consists entirely of restrictions on the States—of which number that of taxation is not one.
- 2^s. That “the power of Congress to make all laws necessary and proper for executing the powers vested in the Government by the Constitution” is improper.
- 1^h. This power results by implication.
- 2^h. It was expressed out of abundant caution and as a protection against State encroachments. (p. 204–5.
- 3^h. The *propriety and necessity* of the laws will be judged, as in the case of the grant of power itself.
- (1). Primarily by the Government.
- (2). Next by the people.
- 3^s. That the clause, “the Constitution and laws of the United States made *in pursuance thereof* shall be the Supreme Law of the Land,” is objectionable.
- The Constitution and laws of the United States are necessarily supreme.
- 1^h. Their supremacy results from the nature of laws and the association of the people in one government.
- 2^h. The laws of the United States are supreme only when made *in pursuance of the Constitution*.
- 4^s. “That the House of Representatives will be too small to contain representatives of *all* tax-paying classes.”
- 1^h. The number of members in the House of Representatives is neither too large nor too small. (p. 403).
- 2^h. The representation by classes Impracticable.
- Unless the Constitution should expressly pro-

vide that each occupation should send one or more, members it would never take place.

(1). Merchants will most likely be the representatives of mechanics and manufacturers from their greater intelligence and from the similarity of their trades.

(2). Doctors, lawyer, etc., form no distinct interests and their selection will depend on their situation and talents.

(3). The landed interests will vote for those in whom they have the most confidence.

3^h. The representation by classes Unnecessary (p. 220-224.)

5^s. "That the Power of Internal Taxation in the Government will be poorly exercised from want of proper knowledge of local circumstances."

1^h. The members of Congress from each State will have the proper knowledge; as in State Legislatures, the county representatives.

2^h. The knowledge required is general.

3^h. Revenue laws are generally framed by competent boards or committees, adapted especially for the work.

3^e. The Quantity of Powers in the General Government Necessary to Accomplish the Objects of Union with respect to Regulating the Militia. (p. 221).

(1). The terms of this grant.

(2). The reason for this grant of power.

(3). Does not supersede the *posse comitatus*.

(4). The safeguards against an abuse of this power

1^d. The Terms of This Grant.

"Congress shall have power to provide for organizing, arming and disciplining the militia and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress."

2^d. The Reason for the Grant of Such a Power.

1°. Uniformity in the organization and discipline of the militia, when called into service for the public defence, can only be accomplished by confiding the regulation of the militia to the Government. (p. 231).

2°. It will tend to prevent large standing armies. To render an army unnecessary will be a more certain method of preventing its existence than a thousand prohibitions on paper.

3^d. The Grant of This Power Will Not Supersede the *Posse Comitatus*.

The power of calling out the *posse comitatus* to assist the magistrate in the execution of his duty results from the clause empowering Congress to pass all laws necessary and proper to execute the declared powers of the Government. (p. 233).

4^d. The Safeguards Against an Abuse of This Power.

1°. The militia would consist of but a small part of the population called, from their avocations at intervals for drill and discipline.

2°. Being our sons, brothers and neighbors they would not be a source of oppression, but rather of protection.

3°. The States and not the Government will have the appointment of the officers. (p. 236).

4°. The States and not the Government will have authority to train them, though the tactics may be prescribed by Congress.

4^a. *The Conformity of the Proposed Constitution to the True Principles of Republican Government.*

(1). Introductory. (2). A survey of the proposed Constitution.

1^b. Introductory.

(1). The character of the persons to whom this survey is directed. (2). The inducements to a fair and charitable consideration of the Constitution.

1°. The character of the persons to whom this survey is directed.

Neither to the *predetermined friend* nor the *predetermined enemy* (the first of whom may be upright, the second must be culpable); but to those who add to a

sincere zeal for the kappiness of their country, a temper favorable to a just estimate of the means of promoting it. (p. 240).

2°. The inducements to a fair and charitable consideration of the Constitution.

(1). The difficulties encountered by the convention framing the Constition. (2). In every case reported by ancient history in which a Government has been established with deliberation and consent it has been framed by a single individual. (3). The defect of the Constitution are the result of defects of antecedent experience, and not of a want of care in preparing it. (4). The present situation of America.

1^d. The difficulties encountered by the convention framing the Constitution.

1°. The novelty of the undertaking.

2°. The difficulty of combining the Requisite Stability and Energy in the Government with a due regard to Liberty and the Republican form.

3°. The difficulty of marking the proper line of partition between the authority of the Government and that of the States.

4°. The difficulty of reconciling the interfering pretensions of the larger and smaller States.

5°. The difficulty arising from conflicting interests in the States because of a difference in locality and policy. (p. 245).

2^d. In every case reported by ancient history in which a Government has been established from deliberation and consent it has been by a single individual. (p. 247).

3^d. The defects in the Constitution are the result of a defect of antecedent experience and not of a want of care.

4^d. The present situation of America considered. (p. 250).

1°. The Severity of her Malady.

2°. The Diversity of the Advice.

4°. The proposed Constitution is an improvement on the Articles of Confederation.

5°. The principal objections to the Constitution lie with greater force against the Articles of Confederation.

2^b. A Survey of the Proposed Constitution.

(1). A Republican form of Government demanded by the genius of the American people. (2). The distinctive characters of the Republican form. (3). The Government proposed conforms to those characters. (4). The character of the Government, as to whether it is Foederal or National in form. (5). The constitution considered. (6). Objections.

1°. A Republican form of Government demanded by the genius of the American people.

1^d. No other form of Government is reconcilable with the fundamental principles of the Revolution. (p. 258).

2^d. This form demanded by that honorable determination which animates every votary of freedom, *to rest all our political experiments on the capacity of mankind for self-government.*

2°. The distinctive characters of the Republican form.

1^d. Republican Government Defined.

A Government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior.

2^d. The Essentials of the Republican Form.

That it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it.

3^d. What is Sufficient to Republican Form.

That the persons administering it be appointed, either directly or indirectly, by the people, and that they hold their appointments during pleasure for a limited time or during good behavior.

3°. The Government proposed conforms to those distinctive characters of Republican form.

3°. Improbability that those who object to the Constitution could improve it.

1^d. As Regards the Essentials of Republican Form.

1°. The House of Representatives is elected directly by the people, as is the case in most of the States.

2°. The Senate, like the Present Congress and the Senate of Maryland, is appointed indirectly by the people, i. e., through the State Legislatures.

3°. The President is chosen through electors, *indirectly* by the people.

4°. The Judges and all other officers of the Government will be chosen *indirectly* by the people.

2^d. As regards the characters sufficient to the Republican form.

1°. The House of Representatives is elected for two years.

2°. The Senate is elected for six years.

3°. The President is elected for four years and is impeachable in office.

4°. The Judges hold during good behavior.

3°. In Prohibiting Titles of Nobility.

4°. The character of the Government, as to whether it is Foederal or National in form.

(1). The nature of Foederal and National Government respectively. (2). The real character of the Government as respects the National or Foederal form. (3). The authority of the convention to propose such a Government. (4). How far the duty they owed to their country could supply any defect of authority.

1^d. The nature of Foederal and National Governments Respectively. (p. 261).

1°. The Foederal Form—regards to the Union as a *Confederacy* of Sovereign States.

2°. The National form regards the Union as a *Consolidation* of the States.

2^d. The real character of the Government as respects the National or Foederal form.

(1). As treated by Mr. Gilmore; (2) as treated in the Foederalist.

1°. As treated by Mr. Gilmore.

The Government is *Foederal in every respect*. The House of Representatives (contrary to Foed., p. 263), is Foederal in its election; for, in determining the number of Representatives in Congress, the population of each State separately is divided by 173,000 to determine its present representation. (Mill's Republican Government, p. 301; Freeman's History of Foederal Government, I., pp. 11-12; Taylor's Origin and Growth of the English Constitution, p. 50).

2°. As treated in the Foederalist (i. e., the real character of the Government as regards the Foederal and National Form.

(1) The foundation on which the Government is established; (2) the sources from which its ordinary powers are drawn; (3) the operation of those powers; (4) the extent of those powers; (5) the authority on which future changes in the Government are to be introduced.

1^f. The Foundation on which the Government is Established.

It is Foederal, for the assent of a *majority* of all the people of the United States will not establish the Government over *all*; but the unanimous assent of the *several States* that are parties to it.

2^f. The sources from which the ordinary powers of the Government are to be Drawn.

1^g. The House of Representatives: National. (See Contra, 1° Supra.)

2^g. The Senate: Foederal.

3^g. The Executive: Partly Foederal and partly National.

3^f. The Operations of those Powers.

Chiefly National; partly Foederal. as in trial of controversies in which States are parties.

4^f. The Extent of those Powers.

In this respect the Government is Foederal, since the local or municipal authorities for indistinct and

independent portions of the supremacy, no more subject, *within their respective spheres*, to the general Government, than the general Government is subject to them, *within its own sphere*. (p. 264).

5^f. The authority on which future changes are to be introduced.

Foederal, in computing the required proportion by States; National, in rendering the concurrence of less than the whole number of States sufficient.

3^d. The Authority of the Convention to propose such a Government.

(1). The sources of that authority; (2) the terms. (3) their construction.

1^o. The Sources of that Authority.

Derived from the commissions of the members of the convention which referred either, (1) to the recommendation from the meeting at Annapolis, in September, 1786, or (2) to that from Congress in February, 1787. (p. 266).

2^o. The terms of that Authority.

1^f. The Exact Terms.

See Foederalist p. 267.

2^f. The substance of that Authority.

1^s. To establish a firm National Government.

2^s. To establish a Government adequate to the exigencies of the Government and the preservation of the Union.

3^s. To effect these objects by alterations and provisions in the Articles of Confederation.

4^s. To report the Constitution to Congress and to the States.

3^o. The construction of those Terms.

(1). Two general rules of construction applicable in this case. (2). The compliance of the convention with those rules.

1^f. Two general rules of construction applicable in in this case.

1^s. "*Every part of the expression ought, if possi-*

ble, to be allowed some meaning and be made to conspire to some common end." (p. 268).

2^g. "*Where the several parts cannot be reconciled the less important should give way to the more important.*"

2^f. The compliance of the convention with these rules.

(1). The great object of the convention was to establish an adequate National Government, and suppose they found it impossible to accomplish this object by alterations and provisions in the Articles of Confederation, referring to Rule 2 (2^g), we take the more important, the instruction to form an adequate National Government, and reject the less important, i. e., the altering, etc., of the Articles.

(2). But this supposition is unnecessary, for, so long as any part of the old Articles remained, the object was accomplished through *alterations and provisions* in the Articles of Confederation. (p. 269).

4^d. How far the duty the Convention owed to their country could supply any defect of authority. (p. 272).

1^e. Their appreciation of the crisis of affairs which led the States, as with one voice, to call the convention.

2^e. They were deeply and unanimously convinced of the necessity to establish the proposed Government.

3^e. The assumptions by Congress of unconstitutional powers at times less urgent than those impelling the convention.

4^e. They contemplated that the plan of Government was of no effect until ratified by the States generally.

5^e. The Constitution considered.

(1). The sum or quantity of power which it vests in the Government, including the restraints on the States; (2) the particular structure of the Government and the distribution of power among its several branches. (p. 277).

1^d. The Sum or Quantity of Power which the Consti-

tution vests in the Government, including the Restraints upon the States.

(1) The powers transferred to the general Government are proper and necessary; (2) they will not be dangerous to the powers left in the several States.

1^f. The Powers Transferred to the General Government are Proper and Necessary.

Those several classes of powers are (1) Security against foreign danger; (2) regulation of intercourse with foreign nations; (3) maintenance of harmony and proper intercourse among the States; (4) certain miscellaneous objects of general utility; (5) certain restraints upon the States; (6) provisions for giving due efficacy to all these powers.

1^g. First Class of Powers: Providing for Security Against Foreign Dangers.

The authorities comprehended in this power are:

1^g. To declare war and grant letters of marque and reprisal.

2^g. To provide armies and fleets.

3^g. To regulate and call forth the militia.

4^g. To levy and borrow money (Gilmore's Notes, 115).

1^h. The Extent of This Power, and Reasons Therefor—See Foed., 187 and seq.

2^h. Additional Argument for Not Restricting Levies or Taxes to External Taxation—w. c.

(1). External taxation defined. (2). Reasons against such a restriction stated. (p. 285).

1ⁱ. External Taxation Defined.

Taxation on articles imported from other countries.

2ⁱ. Reasons Against Such a Restriction Stated.

This is, and always will be, a valuable source of revenue. As long as agriculture continues the sole field of labor the importation must increase as the consumers multiply; but, as soon as domestic manufactures begin, the importation of manufactures will decrease as the people increase.

Hereafter imports will in a great degree consist of raw materials, which will rather call for bounties than duties. Hence, a system of Government intended to endure ought to contemplate and be able to accommodate itself to these changes.

3^b. Reply to the Objection that the Power "*to Lay and Collect Duties, Imposts and Excises to Pay the Debts, and Provide for the Common Defence and General Welfare of the United States*" amounts to an unlimited commission to exercise every power which may be *alleged* to be necessary for the common defence and general welfare.

1ⁱ. The objects alluded to in general terms are particularized immediately.

(See United States Constitution, Art. I., sec. viii).

If *all* powers were intended to be granted under the general terms of providing for the common defence and general welfare, why were the *particular* powers enumerated?

2ⁱ. This language occurs in the Articles of Confederation.

2^f. Second Class of Powers: The Regulation of Intercourse with Foreign Nations. (p. 288).

1^s. Power to Make Treaties.

2^s. Power to Send and Receive Ambassadors, other Public Ministers and Consuls.

3^s. Power to Define and Punish Piracies and Felonies Committed on the High Seas and Offences Against the Law of Nations.

See Story on Constitution, §1164; Gilmore's Notes, p. 135; III Wheat., 339; V Wheat., 184; ib. 76; 120 U. S., 678; Forum Vol. XI., p. 235.

4^s. Power to Regulate Foreign Commerce, including a Power to Prohibit, after 1808, the Importation of Slaves, and to lay an Intermediate Duty of \$10 per head, as a Discouragement to such Importation.

(See Gilmore's Notes, p. 116 and seq. Foed., p. 291).

3^f. Third Class of Powers: The maintenance of

harmony and proper intercourse between the States. (p. 291).

1⁵. Power to regulate commerce among the several States and the Indian Tribes. (Foed., p. 292; Gilmore's Notes, p. 116).

2⁵. Power to coin money, regulate the value thereof and of foreign coin. (p. 294; Gilmore's Notes, p. 116).

3⁵. Power to provide for the punishment of counterfeiting the current coin, securities of United States. See Gilmore's Notes, p. 128.

4⁵. Power to fix the standard of weights and measures.

5⁵. Power to establish an uniform rule of naturalization and uniform laws of bankruptcy. (p. 294; Gilmore's Notes, 124).

6⁵. Power to prescribe the manners in which the public Acts, Records and Judicial Proceedings of each State shall be proved, and their effect in other States. (p. 296).

7⁵. Power to Establish Postoffices and Post Roads.

4^f. Fourth Class of Powers: Certain miscellaneous objects of general utility. (p. 297).

1⁵. Power to "*Promote the Progress of Science and Useful Articles by Securing for a Limited Time to Authors the Exclusive Right to Their Respective Writings and Discoveries.*"

2⁵. Power to "*Exercise exclusive Legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance, become the Seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislatures of the States in which the same shall be, for the erection of Forts, Magazines, Arsenals, Dockyards and other useful buildings*"—w. c.

(1). The necessity for such a power. (2). The guards against its abuse.

1^b. The necessity of such a power.

1^j. It is a power exercised by every Legislature of the Union.

2^j. To secure the public authorities from insult, and their proceedings from interruption.

3^j. To secure the members of the General Government from a dependence on the State comprehending the Seat of Government for protection in the exercise of their duty, which might bring on the National Councils an imputation of awe or influence. (p. 298).

2^b. The guards against its abuse.

1^j. The small extent of the District.

2^j. The territory is to be appropriated to this use with the consent of the State ceding it.

3^j. The State ceding the territory will provide in the compact for the rights of its citizens. (p. 298).

4^j. The Inhabitants will have their voice in electing the government which is to rule them; and and a Municipal Legislature, for local purposes, will be granted them.

Up to 1855 all voice in the affairs of the District of Columbia was restricted to males, free, white and twenty-one years old, but no legislature was given them until 1871. In 1867 suffrage was extended to all, both black and white; but the floating negro vote of 40,000 was so easily controlled that its government became most corrupt, according to Senator Ingalls, and finally bankrupt, and in 1871 the citizens of the District of Columbia petitioned Congress to take away their right of suffrage. Now, in 1894, the District is ruled under the direction of Congress by three Commissioners.

5^j. The authority of the ceding State to make the cession will be derived from the whole people of that State, in their adoption of that Constitution. (p. 299).

3^s. Power "*to Declare the Punishment of Treason but no attainder of Treason shall work corruption of blood, or forfeiture, except during the life of the person attained.*"

See V Wheat, 97; IV Cranch, 75; II Burr's Trial, 401, 439; Revised Statutes, U. S. §5332.

4^s. Power to Admit New States Into the Union; "*but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States or parts of States without the consent of the Legislatures of the States concerned as well as of the Congress.*" (p. 300).

As to the constitutionality of the manner in which West Virginia was made a State, see Gilmore's Notes, p. 216 and seq.

5^s. Power to "*Dispose of and make all needful Rules and Regulations respecting the territory and other property belonging to the United States, provided that nothing in the Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.*" (See Foed. p. 300; Gilmore's Notes; Dred Scot case, 19 How., 393.)

6^s. Power to "*Guarantee to every State a Republican form of Government; to protect each of them against invasion; and, on application of the Legislature or of the Executive, (when the Legislature cannot be convened), against domestic violence.*"

Under this clause was wrongfully claimed the right to reconstruct the South. (Foed. p. 301 and seq.; Gilmore's Notes).

7^s. Power to "*consider all debts contracted and engagements entered into to, before the adoption of this Constitution as being no less valid against the United States, under this Constitution, than under the Confederation.*"

(1). The nature of this power; (2) its object. (3) Objection, that this power does not extend to debts due the United States, answered.

1^h. The nature of this Power.

It is merely declaratory.

2^h. The Objects of this Power.

To quiet the fears of foreign creditors, because of the pretended doctrine that a change in the political form of civil society dissolves its moral obligations.

3^h. Objection, that this power does not extend to debts due the United States, answered. (p. 305).

1^j. Engagements are in their nature reciprocal.

2^j. Every Constitution must limit its precautions to dangers not entirely imaginary.

3^j. The Government would not dare to remit the debts due the public.

8^s. Power to "provide for amendments to be ratified by three-fourths of the States, under two exceptions." (p. 306).

9^s. Power providing that "the Ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same." (p. 306.)

1^h. The principles on which the Articles of Confederation, which stand in the solemn form of a compact among the States, can be superseded without the unanimous consent of the parties to it. (p. 307).

1^j. Because of the necessity of the case.

The principle of self-preservation. (p. 307).

2^j. The Articles of Confederation are but in the nature of a treaty, a breach of any one article of which, by a party to it, abrogates the treaty. These articles or this treaty having been violated in numerous instances, therefore the whole treaty is void, (p. 307-8).

2^h. The relation which is to subsist between the nine or more ratifying States and those not ratifying. While no political relations would subsist, the moral relations would be the same. (p. 308).

5^f. Fifth Class of Powers: Certain restrictions on the States; w. c.

(1). The absolute restrictions. (2). The qualified restrictions.

1^s. The absolute restrictions on the States.

(1). The several absolute restrictions; (2). their nature.

1^h. The several absolute restrictions on the States. w. c.

1^j. "No State shall enter into any treaty, alliance
"or confederation." (p. 308).

2^j. "Grant letters of marque and reprisal."

3^j. "Coin money."

4^j. "Emit bills of credit."

5^j. "Make anything but gold and silver, or legal
"tender in payment of debts;"

6^j. "Pass any bill of attainder or *ex post facto*
"law or laws impairing the obligation of con-
"tracts."

7^j. "Grant any title of nobility."

2^h. The nature and objects of these several absolute restrictions on the States.

These "absolute restrictions" are such that they cannot be removed, even by the "consent of the Congress."

1^j. The nature and objects of the First Absolute restriction: "No State shall enter into any treaty, alliance or Confederation."

This restriction prevails under the Articles, and, for reasons which are very apparent, were copied in the Constitution. (p. 309).

2^j. The Nature and Objects of the several Absolute Restrictions: "No State shall grant letters
"of Marque and Reprisal."

This power naturally belongs to the Government, from the necessity of uniformity.

3^j. The Nature and Objects of the Third Absolute Restriction: "No State shall coin money."

This power was taken from the States to pre-

vent the multiplying of expensive mints and the diversity in form and weight of coins. (p. 309).

4^j. The Nature and objects of the Fourth Absolute Restriction: "No State shall emit bills of "credit."

1^k. The Nature of a Bill of Credit.

It is a written evidence of debt, issued by a State, on the credit of the State and payable at a future day.

2^k. The Objects of this Restriction.

See Foed., p. 310.

5^j. The Nature and Objects of the Fifth Absolute Restriction: "No State shall make anything "but gold and silver a legal tender in the payment of debts."

See Foed., p. 310.

6^j. Nature and Objects of the Sixth Absolute Restriction: No State shall pass any bill of attainer, *ex post facto* laws or laws impairing the obligation of contracts."

Such laws are contrary to the first principles of the social compact, and to every principle of sound legislation. (pp. 310, 311.)

7^j. Nature and Objects of the Seventh Restriction: "No State shall grant any titles of nobility."

This restriction needs no comment.

2^s. The qualified restrictions on the States: (two in number); w. c.

1^h. "No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of Congress."

This follows from the necessity of submitting

the regulation of trade to the Government. (p. 312).

2^h. "No State shall, without the consent of Congress, lay any duty on tonnage."

3^h. "Keep troops or ships of war in time of peace."

4^h. "Enter into any agreement or compact with another State or with a foreign power."

5^h. "Or engage in war unless actually invaded
"or in such imminent peril as will not admit
"of delay."

6^f. Sixth Class of Powers: Powers by which efficacy is given to all the rest.

1^s. Power to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States"—w. c. (p. 312).

(1). The necessity of such a power. (2). The several forms of expressing it—w. c.

1^h. The Necessity of Such a Power.

The substance of such a power is absolutely necessary; hence there can be objection only to its form.

2^h. The several other forms of expressing this power.

(1). By prohibiting the exercise of all powers not expressly delegated. (2). By attempting a positive enumeration of the powers contemplated under the terms "necessary and proper." (3). By attempting a negative enumeration of them. (4). By remaining silent and leaving these necessary and proper powers to construction and inference. (p. 313).

1ⁱ. By prohibiting the exercise of all powers not expressly delegated.

This would either disarm the Government of all real power or lead to a disregard of this express restriction. (p. 313).

2ⁱ. By attempting a positive enumeration of those "necessary and proper powers."

This would have involved a complete digest of laws on every subject to which the Constitution relates, and would have to be accommodated to future changes. (p. 313).

3ⁱ. By attempting a negative enumeration of the powers not "necessary or proper."

An equally chimerical task with the second (2ⁱ), and in effect it would have been a positive grant to the Government of all the powers not prohibited. (p. 314).

4ⁱ. By being silent altogether and leaving these "necessary and proper powers" to inference and construction.

All the particular powers necessary to carry out the general powers would, by necessary implication, have resulted to the Government, and the form used was to remove any pretext to question the essential powers of the Union. (p. 314).

2^s. The power declaring that, "This Constitution
"and the laws of the United States, which shall
"be made in pursuance thereof, and all treaties
"made, or which shall be made, under the author-
"ity of the United States, shall be the supreme
"law of the land, and the judges in every State
"shall be bound thereby, anything in the laws of
"any State to the contrary notwithstanding."
Necessity of such a power.

1^h. The want of this power would have annulled all powers in the Constitution which exceeded those enumerated in the Articles of Confederation. (p. 316).

2^h. The Constitutions of some States do not admit expressly and fully the existing powers of the Confederacy, and an express saving of the former would, in such States, have brought into question every power of the Constitution.

3^h. The Constitutions of the States differ, and

hence a treaty, etc., would be valid in some States and not in others. (p. 316).

4^h. The Supremacy of the State Constitutions, therefore, would have the head of the Government ruled and not ruling its members.

3^s. The Power declaring that "The Senators and Representatives and members of the several State Legislatures and all Executive and Judicial officers, both of the United States and the several States shall be bound by Oath or Affirmation to support this Constitution;" Necessity for Such a Power. (p. 317).

4^s. The Powers belonging to the Executive and Judiciary Departments.

See Foed. pp. 317; 467 and seq.; 538 and seq.

2^o. The mass of powers transferred to the Foederal Government will not be dangerous to the reserved authority of the States.

1^f. Because of the tendencies in Confederacies to despoil the Government of its delegated powers.

2^f. Because the State Governments are constituent and essential elements of the Foederal Government.

3^f. Because the employes of the United States will be fewer than those of the States.

4^f. Because the powers reserved by the States are relatively greater and more numerous than those of the Union.

5^f. Because the Constitution is the result less of new powers in the Union than of an invigoration of the old.

6^f. Because the State Governments will possess more influence among the people. (p. 325).

(1). From the greater number of officers.

(2). From the character of the interests they provide for. (p. 326).

(3). From the greater familiarity of the people with them.

(4). Illustrated from their history during the Revolution.

7^f. Because the pre-possession of the Government officers will be in favor of their States. (p. 327).

8^f. Because the States possess the means of defeating Foederal encroachments.

(1). The means of encroachment possessed by the Foederal Government. (2). Those possessed by States.

1^g. The means of encroachment possessed by the Foederal Government.

A standing army cannot exceed one-twenty-fifth of the population able to bear arms; and hence, in the United States such an army could not (in 1781) exceed 30,000 men, or one-one-hundredth part of the whole number of people. (p. 331).

2^g. The Means of Resistance to Foederal Encroachments Possessed by the State Governments.

Twenty-four-twenty-fifths of the arms-bearing population, or 500,000 men, to withstand 30,000. (p. 331).

2^d. The particular structure of the Government, and the distribution of power among its several branches—w. c.

(1). The particular structure of the Government.

(2). The distribution of power among its several branches.

1^e. The particular structure of the Government—w. c.

(1). The maxim on which the Government is founded. (2). The meaning of this maxim. (3). The means hereby to keep these three departments separate and distinct—w. c.

1^f. The maxim on which the Government is founded.

"The Legislative, Executive and Judiciary Departments should be kept separate and distinct." (p. 334).

2^f. The meaning of this maxim that, "The Legislative, Executive and Judiciary Departments should be separate and distinct."

(1). The views of Montesquieu. (2). The provisions of the State Constitutions relative thereto—w. c.

1^s. The views of Montesquieu relative to this maxim.

(1). As shown from the British Government, as his standard on this subject. (2). As shown from his expressed reasons.

1^h. The views of Montesquieu, relative to this maxim, as shown from the British Constitution, his standard on this subject. (p. 334).

1^j. The King forms an integral Part of the Legislative authority. (p. 335).

2^j. The House of Lords is the Sole Depositary of Judiciary Power in cases of Impeachment, and is the Supreme Appellate Tribunal. (p. 333).

3^j. The judges attend and participate in the Legislative deliberations.

2^h. The views of Montesquieu as shown by the reasons given by him for this maxim. (pp. 336, 337).

1^j. "When the Legislative and Executive powers
"are vested in the same person or body, there
"can be no liberty because the same monarch or
"Senate may *enact* tyrannical laws to *execute*
"them in a tyrannical manner."

2^j. "Were the Judiciary and Legislative powers
"united, the life and liberty of the subject would
"be exposed to arbitrary control, for the *judge*
"would then be the *legislator*."

3^j. "Were the Executive and Judiciary powers
"united, the *judge* might behave with all the
"violence of the *oppressor*." (p. 337).

2^s. The meaning of this maxim, as shown by provisions in the State Constitutions relative thereto.

(1). The particular provisions of the several State Constitutions relative thereto. (2). A general view of the State Constitutions relative to this maxim—w. c.

1^h. The particular provisions of the State Constitutions relative thereto.

For a discussion of the Constitutions of New

Hampshire, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, see Foed. pp. 337, 342.

2^h. A general view of the State Constitutions relative to this maxim. (p. 342).

1ⁱ. In some instances this maxim has been violated, and in no instance has a proper method of maintaining it been devised.

2ⁱ. The proposed Constitution does not violate this maxim in its true meaning, nor in the meaning heretofore given to it in America. (p. 342).

3^f. The means whereby to keep the Legislative, Executive and Judiciary Departments separate and distinct—w. c.

(1). The insufficiency of mere parchment barriers to attain this object. (2). The insufficiency of Mr. Jefferson's proposition, "that whenever any two of the three branches of Government shall concur in opinion, each by the voice of two-thirds of their whole number, that a convention is necessary for altering the Constitution, or correcting breaches of it, a convention shall be called for the purpose." (3). The insufficiency of periodical appeals to the people. (4). The proper expedient for keeping these three Departments separate and distinct—w. c. (p. 343).

1^g. The insufficiency of mere parchment barriers for keeping these three Departments distinct.

(1). Because of the tendency of the Executive Department, in hereditary monarchies, to usurpation. (2). Because of the tendency of the Legislature, in a representative republic as the United States, to usurpation—w. c.

1^h. Because of the Tendency of Hereditary Monarchies to Usurpation. (p. 344).

2^h. Because of the Tendency of the Legislature, in a Representative Republic as the United States, to Usurpation.

(1). The causes of this tendency.

(2). This tendency illustrated from the history of Virginia and Pennsylvania.

1^j. The Causes of this Tendency in the Legislature in, a Representative Republic, to Usurpation.

1^k. The Executive Department being limited in extent and duration of power, there is no danger in the United States from that quarter. The Legislature must be jealously guarded because of its supposed influence over the people and from the weight of its numbers. (p. 344).

2^k. Its Constitutional Powers are more extensive and less susceptible of precise limits; it can with greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments. It is often a question of real nicety in Legislative bodies, whether the operation of a particular power will or will not extend beyond the Legislative sphere.

(See Foed. p. 345; Cooley's Const. Lim., (6th ed.) chap. v. p. 102; 10 Wheat., 46; 11 Pa. State Rep., 494).

3^k. The Legislative Department alone has access to the pockets of the people.

2^j. The Tendency of the Legislature to Usurpation illustrated from Virginia and Pennsylvania.

1^k. From the History of Virginia.

Mr. Jefferson in his "Notes on the State of Virginia," p. 195, says: "All the powers of Government—Legislative, Executive and Judicial—result to the Legislative body." (p. 346).

2^k. From the History of Pennsylvania.

The council of censors of 1783 and 1784, who were appointed to decide in what instances the Legislative and Executive Departments had abused or neglected their powers, reported the following Legislative and Executive violations of the Constitution of Pennsylvania.

1^l. Legislative Violations of the Pennsylvania Constitution.

1^m. A great number of laws were passed without first being printed for the consideration of the people.

2^m. The Constitutional trial by jury had been violated.

3^m. Executive powers had been usurped.

4^m. The salaries of the Judges had been changed and their powers often assumed.

2^h. Executive Violations of the Pennsylvania Constitution.

This Department had been guilty of frequent violations of the Constitution, but under the following circumstances:

(1). From the necessities of war.

(2). In compliance with the declared or known sentiments of the Legislature.

(3). From the evils of the plural executive, consisting of about twenty members—resembling a Legislature in this respect more than an Executive Department.

2^g. The insufficiency (for keeping these three departments separate and distinct) of Mr. Jefferson's proposition of occasional appeals: "that whenever any two of the three branches of Government shall concur in the opinion, each by the voice of two-thirds of its members, that a convention is necessary for altering the Constitution or correcting breaches of it, a convention shall be called for the purpose." (p. 349).

1^h. This provision does not reach the case of a combination of two of the departments against the rest. (p. 350).

2^h. These appeals, implying as they do some defect in the Government, deprive the Government of that veneration which is necessary to stability. (p. 351).

3^h. The danger of disturbing the public tranquil-

ity by interesting too strongly the public passions. (p. 351).

4^h. The decision resulting from such appeals would not preserve this desired equilibrium (p. 352).

1^k. The tendency of the Legislature to encroach would render most frequent the appeals by the Executive and Judiciary Departments. The jealousy of the people of the former, their small number, the mode of the appointment of the judiciary, their removal from the people, the much greater number composing the Legislature, their personal association among the people, all tend to taint the decision of the people with partiality for the Legislature. (p. 353).

2^k. The Legislative party would probably be members of that convention and be their own judges. (pp. 353-4).

3^s. The insufficiency of periodical appeals for keeping the Legislative, Executive and Judiciary Departments separate and distinct.

1^h. When the periods are of short intervals.

The measures to be reviewed will be recent, and the circumstances that gave birth to them will still wield a potent influence. (p. 353).

2^h. When the periods are of long intervals.

1^j. In respect of recent measures, the objections under (1^h.) would apply.

2^j. A distant prospect of censure exercises very little restraint on present excesses. (p. 355).

3^j. The remedy would often come too late for the disease.

4^j. Evils of long standing might take deep root and not be easily extirpated.

4^s. The proper expedients for keeping these three Departments separate and distinct.

By giving to each department a will of its own and hence:

1^h. The members of each department should have

as little agency as possible in the appointment of the others. (p. 359).

In the case of the Judiciary Department this principal cannot be strictly adhered to for two reasons:

(1). Their peculiar requirements demand that mode of choice best suited to obtaining persons of those requirements. (2). Their necessarily long duration in office destroys all dependence on the appointing power. (p. 359).

2^h. The members of each department should be as little dependent as possible on the others for their emoluments.

3^h. The members of each department should possess the necessary constitutional means and personal motives to resist encroachments. (p. 360).

4^h. The encroaching spirit of Republican Legislatures should be further guarded against.

1^j. By dividing the Legislature into two branches, e. g., a Senate and House of Representatives.

2^j. By rendering them as little connected with each other as the good of the society will admit.

1^k. Through different modes of election. (p. 361).

2^k. Through different principles of action.

3^j. By giving to the Executive a qualified veto and a qualified connection with the Senate as a substitute for an absolute veto, which on ordinary occasions might not be used with sufficient firmness, and which on extraordinary occasions might be abused. (p. 361).

5^h. Through an extension of the Foederal system of America.

1^j. In the compound Republic of the United States the power surrendered by the people is divided between two Governments—the State and Foederal—and each of these two portions is divided into three parts, thus providing a security double that provided in a single Republic. (p. 362).

2^j. This Foederal system, by comprehending in the society so many separate descriptions of citizens, will render an unjust combination of a majority improbable if not impracticable. (pp. 62, 362-3).

2^e. The distribution—by the Constitution—of power among the three departments—the Legislature, the Executive and the Judiciary.

1^t. The Legislature—w. c.

(1). The House of Representatives. (2). The Senate.

1^s. The House of Representatives—w. c.

(1). The qualifications of the Representatives. (2). The qualifications of the electors of the Representatives. (3). The term of office of the Representatives. (4). The apportionment of the Representatives to the several States. (5). The number of which the House of Representatives is to consist. (6). The authority of Congress to regulate, in the last resort, the election of the House of Representatives. (p. 363).

1^h. The qualifications of the Representatives.

1^j. They must be twenty-five years old when they enter on their duties, not necessarily when elected.

2^j. They must have been seven years citizens of the United States.

This restriction applies only to naturalized citizens and not to inhabitants of territory acquired by the United States by purchase—e. g., Florida and California—for they became citizens at the moment of the purchase.

3^j. They must at the time of their election be inhabitants of the State they are to represent.

4^j. They must, during their time of service, hold no office under the United States.

2^h. The qualifications of the electors of the Representatives. (pp. 365-6).

(1). The qualifications prescribed by the Constitution. (2). The necessity for prescribing them

in the Constitution. (3). The advantages of the Constitutional provision. (p. 365).

1^j. The qualifications prescribed by the Constitution.

The same as those of electors of the most numerous branch of the State Legislatures; e. g., any person entitled by the Constitution of Virginia to vote for a member of the lower House of the Virginia Legislature is entitled to the United States Constitution to vote for a member of the United States House of Representatives.

2^j. The necessity for prescribing these qualifications in the United States Constitution.

The definition of the right of suffrage is justly regarded as "a fundamental article by Republican Government;" hence it was incumbent on the Convention to define and establish this right in the Constitution.

1^k. To have left the matter open for the occasional regulation of Congress would have violated that "fundamental article."

2^k. To have submitted it to the Legislative discretion of the States would have given rise to two objections:

(1) The violation of the "fundamental article."

(2) The rendering of the House of Representatives dependent on the State Governments. (p. 365).

3^k. To have made the qualifications uniform would have been (1) dissatisfactory to some States; (2) difficult for the convention. (p. 365).

3^j. The Advantages of the Qualifications Prescribed by the Constitution. (p. 366).

1^k. It must be satisfactory to every State.

2^k. It will be safe to the United States.

Being fixed by the State Constitutions and not subject to the Legislatures.

3^h. The term of office of Representatives.

(1). The length of their term. (2). Will biennial elections of the Representatives be safe? (3). Will they be necessary or useful?

1^j. The length of the term of office of Representatives.

Two years.

2ⁱ. Will the biennial election of the Representatives be safe?

(1). Affirmatively shown from history.

(2). Reply to the objection that, "Where annual elections cease tyranny begins."

1^k. Affirmatively shown from History that Biennial Elections in the United States will prove safe. (p. 366).

It is essential to liberty that the Government in general should have a common interest with the people, and especially essential that the House of Representatives should have an immediate dependence on and sympathy with the the people—an end only to be accomplished through frequent elections. But the degree of frequency required is difficult of determination.

1^l. From the History of the House of Commons in England.

Originally the times of election of the commons was within the discretion of the King.

In the reign of Charles II. a statute made the period three years. (p. 368).

In the reign of William III. the same period was adopted. In 1787 the period was seven years. If, under triennial, and even under septennial elections, the English people have, under the unlimited Legislative authority of the House of Lords and the House of Commons, preserved a considerable degree of liberty, much more ought the people of the United States to be safe with a House of Representatives, limited in authority and elected every two years.

2^l. From the History of Ireland.

Originally members of Parliament in Ireland

were elected seldom, as on the ascension of a king.

The Parliament beginning in the reign of George III. continued thirty-five years.

In 1787 they were elected every five years. (In 1801 the Irish Parliament was abolished). The conclusion is, that if the Irish have preserved any liberty under their system. much more ought we under ours. (p. 369).

3¹. From the History of the Colonies.

E. g., Virginia elected her Representatives for seven years and was the first to resist the Parliamentary usurpations of England and the first to espouse the Declaration of Independence. (p. 371).

2^k. Reply to the objection that, "Where annual Elections end Tyranny Begins".

1¹. There is No Reason for the Objection.

For there is no connection between the sun, or the seasons, and the time that virtue can withstand temptation.

2¹. It was not advocated by the States.

In Connecticut and Rhode Island the period is six months, in South Carolina, two years and in the other States one year. The ratio between the extreme periods is as 1 to 4; yet, does that represent the ratio of liberty enjoyed by the people of Rhode Island and South Carolina respectively? (p. 372).

3¹. The Ground of This Objection is Inapplicable to the United States.

It is borrowed from England, where no better security could be desired than an appeal to some simple and familiar period of time to measure the danger of innovations, to fix the national sentiment and unite patriotic exertions as barriers against a Legislature, that in England can change even the fundamental Constitution itself. Biennial elections will prove a greater security in the United States

under a Limited Constitution, unchangeable by the Legislature, than even a less period in England under their present system. (p. 373).

3^l. The Necessity of Biennial Elections of the House of Representatives.

1^k. To give the members time to acquire a practical knowledge of their duties—e. g.

1^l. The local laws and situations of the several States.

1^m. For the regulation of foreign trade.

2^m. Of inter-state trade and taxes.

3^m. And of the militia.

2^l. The regulation of foreign affairs.

2^k. This period is a greater inducement than one year to competent men to leave home and take the position. (p. 376).

3^k. To prevent too great an accumulation of inexperienced men.

4^k. To give sufficient time for investigating spurious elections.

4^h. The apportionment of Representatives to the several States.

(1). The mode of apportionment. (2). The representation of slaves, and reasons therefor.

1^j. The mode of apportionment of Representatives to the several States.

Representatives are to be apportioned in the several States in the same manner as direct taxes, according to the population of each State.

2^j. The representation of slaves and reasons therefore.

1^k. The Representation of Slaves.

In determining the number of Representatives which each State is to have in Congress five negroes are to be counted as three white persons—i. e., one negro is equal to three-fifths of a white person. (p. 378).

2^k. Reasons for the Representation of slaves.

1^l. Slaves are Persons as well as Property.

1^m. The respects in which they are regarded as property. (p. 379).

1ⁿ. They are bought and sold.

2ⁿ. They are compelled to labor for their masters.

3ⁿ. They are restrained in their liberty and chastised in their body according to their masters' caprices.

2^m. The respects in which they are regarded as persons.

1ⁿ. They are protected in their life and limb against the violence of others.

2ⁿ. They are punishable for violence to others. (p. 380).

2^l. It would not have been just to have counted the slaves when taxes were to be imposed and to have excluded them when the number of Representatives was to be calculated. (p. 380).

3^l. Reply to the Objection that "Slaves are not included in the estimate of Representatives in any of the States possessing them."

It is a fundamental principle of the proposed Constitution that, as the aggregate number of Representatives allotted to the several States is to be determined by a Foederal rule, founded on the aggregate number of inhabitants, so the right of choosing this allotted number in each State is to be exercised in such manner as the State itself may designate. In all the States a certain portion of the inhabitants is not counted.

E. g., In Virginia none but freeholders can vote; Massachusetts requires an educational qualification. (p. 381).

3^l. Representation relates to property as well as to persons. (p. 382.)

5^l. The votes allowed in the Federal Legisla-

ture to the people of each State ought to bear some proportion to the comparative wealth of the States for another reason: States have not, like individuals, an influence over each other, arising from superior advantages of fortune. (p. 382).

6^l. This system will tend to the accuracy of the census. (p. 384).

5^b. The number of which the House of Representatives is to consist, and the objections thereto considered.

1^j. The number of which the House is to consist.

On the ratio of seven Representatives to 30,000 people, the first House of Representatives will consist of sixty-five members. After the first census it will probably consist of about 100 members. (It did in fact consist of 105 members in 1793. W. A. F.)

2^j. Objections to the number of which the House of Representatives is to consist, answered.

(1). "That so small a number of Representatives will be an unsafe depositary of the public interests." (2). "That they will not possess a proper knowledge of the local circumstances of their numerous constituents." (3). "That they will be taken from that class of citizens which will sympathize least with the mass of the people and be most likely to aim at the elevation of a few." (4). "That the number of which the House of Representatives is to consist will become more and more disproportionate from the lack of a correspondent increase in the number of Representatives."

1^k. First Objection, that "the number of which the House of Representatives is to consist will be an unsafe depositary of the public interests"—answered.

(1). The difficulties of determining the proper number. (2). General rules to be observed in determining this number. (3). The securities against encroachments by the number proposed.

1^l. The Difficulties of Determining the Proper Number.

These are best shown by an examination of the several State Legislatures.

(1). The number of Representatives in Delaware is two.

(12). The number of Representatives in Massachusetts is about three hundred and fifty.

(3). The number of Representatives in Pennsylvania is about seventy. The ratio of representation is not the same in any two States.

The ratio of Representation in Pennsylvania is one Representative to about 4,000 people; in Rhode Island, one Representative to about 1,000.

2^l. General rules to be observed in determining the number of Representatives.

First. The number must be so large as to secure the benefits of free consultation and discussion and to guard against too easy a combination for improper purposes.

Second. The number ought to be sufficiently small to guard against the confusion and intemperance of a multitude. (p. 386).

3^l. The securities against encroachments by the number proposed.

(1). The actual number composing the House of Representatives.

(2). The securities.

1^m. The actual number composing the House of Representatives.

1ⁿ. The number of Representatives in 1787
Sixty-five.

2ⁿ. The actual Number in 1793.

The number then was one hundred and five, showing that the estimate of the Foederalist of 100 was safe.

3ⁿ. The actual number in 1894.

Three hundred and sixty-five Representatives and four from Territories.

2^m. The securities against such encroachments, (p. 388).

1^a. The genius of the people. (p. 388).

E. g., Their scorn of the foreign gold.

2^a. The lack of means of corruption by the other branches of the Foederal Government. (p. 390).

2^k. Second objection to the constitution of the House of Representatives, that "the number of Representatives will be too small to possess a proper knowledge of the local circumstances of their various constituencies," answered.

(1). The source of this objection.

(2). The objects of Foederal legislation.

(3). Comparison drawn between the House of Commons and the House of Representatives, and conclusions thereon.

1^l. The source of this objection.

In forgetting that the knowledge of the Foederal Representatives will extend only to general subjects of legislation, as commerce and taxation, and need not extend to a knowledge of minute local details. (p. 291).

2^l. The objects of Foederal legislation.

1^m. Commerce.

Foed., p. 392.

2^m. Taxation.

Foed., p. 392.

3^m. The Militia.

Foed., p. 393.

3^l. Comparison drawn between the House of Commons and the House of Representatives as to numbers, and conclusions thereon.

1ⁿ. Comparison drawn between the House of Commons and the House of Representatives as to numbers.

1^a. Ratio of representation in the House of Commons.

The total number is 558. Of these, 62 are elected by 364 people, 279 are elected by 5,723 people and 217 are elected by all the people.

Hence, we may say that the 8,000,000 people (in 1787) of England and Scotland had, say, 279 (one-half of 558) representatives, or 1 to every 28,674 people.

2^a. Ratio of representation in the House of Representatives.

In 1787, 1 to 30,000; (in 1894, 1 to 156,000.)

2^m. Conclusions from this comparison.

That, if one Representative to every 28,000 has been able to preserve the liberties of the people and have a proper knowledge of local affairs in England under a monarchy and with an unlimited Legislature, *a fortiori* ought 30,000 to do so in the United States in a Republic with a limited government? (p. 396).

3^k. Third objection to the Constitution of the House of Representatives, that "it will be taken from that class of citizens which have least sympathy with the mass of the people and will be most likely to aim at the elevation of the few," answered.

(1). Certain considerations that will tend to secure the fidelity of the Representatives to their constituents. (2). This objection is inadmissible in its consequences; it is unreasonable and unwarranted by history.

1^l. Certain considerations that will tend to secure the fidelity of the Representatives to their constituents.

1^m. The electors are to be the great body of the people of the United States, and are determined by the States themselves.

2^m. Every man whose merit commends him to the esteem and confidence of the people may be a Representative.

3^m. The situation of the men securing the people's suffrages involves every security for their fidelity that can be desired. (p. 398).

1ⁿ. The Representatives, having received the suffrages of the people, must have had such qualities as commended them to the people for integrity and fidelity.

2ⁿ. The Representatives will enter into office with a feeling of love and gratitude to their constituents and a desire to retain their good opinions.

3ⁿ. Those Representatives elevated by the people will feel no desire to make any diminution in the rights and privileges of the power that elevated them. (p. 398).

4ⁿ. Biennial elections, which keep the Representatives continually in mind of their dependence on the people.

5ⁿ. The Representatives can make no laws, oppressive or not, that will not operate equally on themselves as on others.

2^l. This objection is inadmissible in its consequences; it is unreasonable and unwarranted by history.

1^m. It is Inadmissible in its Consequences.

It strikes at the root of the Republican Government, and if it proved anything, would prove that the people are incapable of choosing their Representatives. (p. 401).

2^m. It is Unreasonable.

Because a better Representative should be elected by 5,000 say, than 500, the field of selection being larger and more difficult to corrupt.

3^m. It is Unwarranted by History.

1ⁿ. As shown by the History of the House of Commons.

The electors of the House of Commons are restricted to freeholders of estates of one hundred pounds or more per year, yet there the Representatives have not elevated the few at the expense of the many.

2ⁿ. As shown from the History of the American Colonies.

E. g., Pennsylvania, Massachusetts and others. (p. 402).

4^k. Fourth objection to the Constitution of the House of Representatives, that "the number of which the House of Representatives is to consist will become more and more disproportionate from a lack of a correspondent increase in the number of Representatives," answered.

1^l. The provision of the United States Constitution on this subject will not suffer by comparison with State Constitutions.

The number of Representatives in the first Congress was to last but three years, when a census was to be held then, and every succeeding ten years, for the purpose of regulating the number of Representatives; no such State provision exists. (p. 404).

2^l. In the States, even under their defective systems, the increase in Representatives has kept pace with the increase in population.

2^l. The peculiar constitution of the Senate and House of Representatives will conduce to an augmentation of the number of Representatives.

In the Senate the States are represented and the smaller States have the advantage; in the House the citizens are represented and the larger States have greater weight and would be most strenuous in their efforts to increase the number of Representatives.

The fact that the Senate must pass on any bill

for an increase of Representatives would not defeat it for several reasons:

First. The House, being larger and speaking the will of the people and of the larger States and having justice on their side, will have great moral influence over the Senate.

Second. The medium States, under these circumstances, will probably join the juster and stronger States.

Third. The new and growing States would favor reapportionment. (p. 406).

Fourth. The House of Representatives holds the keys to the Treasury and hence may demand a reapportionment. (p. 407).

3^j. Additional reasons for restricting the number of the first House of Representatives to sixty-five.

1^k. From reasons of economy.

2^k. To secure a greater portion of fit Representatives.

3^k. The larger representative assemblies are, the more they will partake of the infirmities of democracies. (p. 409).

6^h. The authority of Congress to regulate, in the last resort, the election of the members of the House of Representatives.

(1). The exact terms of this authority. (2). The general principle on which this authority rests. (3). The necessity of such an authority existing somewhere. (4). The different ways of modifying or disposing of this authority.

1^j. The exact terms of this authority.

"The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time by law, make or alter such regulations, except as to the places of choosing Senators." (p. 411).

2^j. The general principle on which this authority rests.

Every government ought to contain in itself the means of its own preservation.

3^j. The necessity of such an authority existing somewhere.

This discretionary power must have been placed somewhere, since an election law, which would have always been applicable to every probable change in the situation of the country, could not have been framed and inserted in the Constitution. (p. 411).

4^j. The different ways of modifying or disposing of this authority.

1^k. By lodging it wholly in Congress.

This plan would have met with universal condemnation.

2^k. By lodging it wholly in the State Legislatures.

(1). The chief danger of this plan. (2). An argument in favor of the plan answered.

1^l. The chief danger of this plan.

The States could destroy the Government by neglecting to appoint persons to administer it. (p. 413).

2^l. An argument in favor of this plan, answered.

1^m. The argument stated.

"The election of the United States Senators is entirely in the hands of the State Legislatures, and, by forbearing to elect Senators, they could destroy the Government; having placed the existence of the Government in this case in the States, why not in the case of House of Representatives?"

2^m. The argument answered.

1ⁿ. The fact that the State Legislatures have the power, in the election of Senators, to destroy the Union is no reason why they should be given the additional power through the election of Representatives. (p. 413).

This evil in the case of the Senate could not

be avoided and yet give the Government a Foederal feature.

2^m. More danger is to be apprehended in the case of the election of Representatives than of Senators.

Only one-third of the Senators are elected every two years, and no State now elects both of its Senators at the same time, while all of the Representatives are elected every two years. Hence a combination of all the States electing Senators at one time would still leave at least two-thirds of the Senate and more than a quorum; but a combination of a few States to prevent the election of the Representatives would destroy this branch of Congress and annihilate the Government. (p. 414).

3^k. By lodging it primarily in the States and ultimately in the Congress.

(1). The safety of this plan. (2). Its advantages.

1^l. The safety of this plan.

(1). As "to promoting the election of some favorite class." (2). As to its lack of a provision requiring, "that all elections shall be held in the counties where the electors reside."

1^m. As to "promoting the election of some favorite class."

1^a. Such an attempt would cause a revolt of the people.

2^a. Such an attempt would be difficult of success from the dissimilar ingredients composing the Government.

(1). As to the House of Representatives. The diversity in the property, habits, genius and manners of the electors is a sufficient guarantee for a diversity of Representatives.

(2). The United States Senate is to be selected by Legislatures chosen directly by the people.

(3). The President will be the choice of electors of the people.

3ⁿ. The qualifications of electors are to be regulated by the States themselves.

2^m. As to the lack of a provision requiring, "that all elections shall be held in the counties where the electors reside." (p. 424).

1ⁿ. Such a provision would have been harmless.

• 2ⁿ. There are no such provisions in the State Constitutions.

The New York Constitution examined. (p. 424).

2^l. The advantages of the plan determined by the convention. (p. 411).

(For a full and interesting discussion under 6^h, see Gilmore's Notes, pp. 80 and seq.)

To establish a uniform time of holding elections for Representatives, should it ever become desirable.

2^s. The Senate—w. c.

(1) The qualifications of members; (2) the manner of their election; (3) the manner of filling vacancies; (4) the equality of representation in the Senate; (5) their number and the term for which they are elected; (6) the powers vested in the Senate.

1^h. The Qualifications of Senators.

1^j. They must be thirty years of age. (p. 428).

2^j. They must have been citizens nine years.

These requirements are more extensive than those for the Representatives, because the Senatorial trust requires greater extent of information and stability of character.

2^h. The manner of their election.

They are elected by the State Legislatures for two reasons:

First. As favoring a more select appointment.

Second. As a special acknowledgment of the Foederal element in the Government, this action of the several Legislatures being a State act and an act of sovereignty.

3^h. The Manner of Filling Vacancies in the Senate.

(See United States Constitution, Art. I., §3, clause 2; Gilmore's Notes, p. 71; Madison Papers, pp: 1228, 1269-70, 1543, as to why "resignation or otherwise" was used. It means by "resignation or any other manner whatever.")

(1). If the Legislature of the State having the vacancy is not in session the Governor appoints.

(2). If the Legislature is in session the Legislature of that State elects the successor.

4^h. The Equality of Representation in the Senate.

1^j. The Cause of This Equality.

It was the result of a compromise between the larger and the smaller States, and, but for such a provision, the smaller States would not have consented to enter the Union.

2^j. The Effect of this Equality.

1^{k'} It is a Constitutional recognition of the residuary sovereignty of the States. (p. 430).

2^k. It will prove a check to improper legislation. (p. 430).

5^h. The Number of Senators and the Term for Which They Are Elected.

1^j. The Actual Number of Senators and Their Term of Office.

(1). The Senators are two from each State; hence, with the original thirteen States, the Senate consisted of twenty-six Senators; as it now (1894) consists of 88. (2). They are elected for six years. (p. 431).

2^j. The objects to be attained by having a Senate.

In order to thoroughly appreciate the composition of the Senate, it will be necessary to examine into the purposes of its establishment. We will consider the object of a Senate as, (1) suggested by reason; (2) as illustrated by history.

1^k. The objects of a Senate as suggested by reason.

(1). As a check on the House of Representatives. (2). As a check on the people themselves.

1^l. As a check on the House of Representatives.

1^m. By requiring the concurrence of two distinct bodies in schemes of usurpation.

2^m. From the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, the House of Representatives will require such a check as the Senate—a stable and small body. (p. 432).

3^m. By supplying the defect of the House of Representatives, in the want of a due acquaintance with the objects and principles of legislation, as a result of the short period for which the Representatives are elected.

4^m. By preventing that mutability in the public councils, resulting from a rapid succession of new members. (p. 433 and seq.)

5^m. By giving to the Government a due sense of National character. (p. 436).

6^m. By supplying the defect of a want of a due responsibility in the Government to the people, arising from the frequency of elections in the House. (p. 437 and seq.)

2^l. As a Check on the People Themselves.

There may be times when the people, inflamed by passion or misled by artful and interested men, will call for measures which they will soon lament. At such times the necessity for a temperate and respectable body like the Senate will be great and their influence very salutary.

2^k. The Objects of a Senate as Illustrated by History.

We have no record of a long-lived Republic without a Senate; e. g., Sparta, Rome and Carthage. (p. 439 and seq.)

6^b. The Powers Vested in the Senate.

(1) In the making of treaties; (2) in the appoint-

ing of public officers; (3) in the trying of impeachments. (p. 446).

1^j. The powers vested in the Senate in the making of Treaties.

(1). The exact terms of this power. (2). Reasons for associating the Senate in the making of treaties. (3). Objections thereto.

1^k. The Exact Terms of This Power.

The President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur."

2^k. Reasons for associating the Senate in the making of treaties.

1^l. Because the Senators will possess greater wisdom and experience.

1^m. From their maturer age; they must be at least thirty years of age, the Representatives only twenty-five.

2^m. From the manner of their selection.

By the State Legislatures.

2^l. Because of the peculiar constitution of the Senate.

1ⁿ. They are elected for six years.

2ⁿ. Only one-third of the Senators are elected every two years, leaving two-thirds of the Senate at least composed of experienced men.

3^l. Because, from their smaller number, they better permit of secrecy and dispatch than the House of Representatives.

3^k. Objections to associating the Senate in the making of treaties.

1^l. Because, "the treaties, having the force of laws, should be made only by men invested with legislative authority." (p. 450).

The Executive and Judiciary Departments of the Government perform acts that are as binding as those of the Legislature.

2^l. Because, "treaties so made would be mere

acts of the Legislature, and therefore ought to be repealable at pleasure and not the supreme law of the land."

The fallacy is in assuming that they are "mere acts of the Legislature." Treaties are contracts, to establish which two parties must agree, and are binding till both agree to cancel or alter them. (p. 451).

2^j. The powers vested in the Senate in the appointing of public officers.

See post. p. 469 and seq.

3^j. The powers of the Senate in the trying of impeachments.

(1). The exact terms of this power. (2). Reasons therefor. (3). Objections thereto.

1^k The Exact Terms of This Power.

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the President of the United States is tried the Chief Justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present. (p. 454).

2^k. The Reasons Therefor.

1^l. Impeachment is a method of National inquest into the conduct of public men, and most properly the Representatives of the Nation should be the inquisitors.

The House of Representatives being allowed to prefer the charges, the other branch of the People's Representatives should be joined in the inquest.

2^l. Our plan of impeachment is modeled after that of England. There the House of Commons impeaches and the House of Lords tries.

3^l. The Senate will be superior, for this purpose, to the Supreme Court.

1^m. Because of its greater numbers.

2^m. An officer after conviction, upon impeachment, is still subject to further indictment and

punishment, and thus the Supreme Court, if they tried the impeachment, might be called in another trial to pass upon their former judgment. (p. 457).

4¹. The Senate alone will be superior, for this purpose, to a court consisting of the Senate and Supreme Judges.

This plan would be subject to objection under (2^m). (p. 457).

3¹. It would be superior to a Court of Impeachment established solely for that purpose.

This scheme is utterly impracticable.

3^k. Objections to constituting the Senate a Court of Impeachment.

1¹. That it confounds the Legislative and the Judiciary Authority.

See Foed., p. 333.

2¹. That it will cause such an accumulation of power in the Senate as to make the Government too aristocratic.

1^m. The House of Representatives, being the most popular branch of the Government, will be a full match for every other member of the Government.

2^m. The House of Representatives originates money bills.

3^m. The House of Representatives originates all impeachments.

4^m. The House of Representatives will elect the President when the electors fail to choose.

3¹. That their agency in the appointment of officers will render the Senate too indulgent judges of their appointees.

1^m. This objection would condemn the practice of all the State Governments. (p. 463).

2^m. The Senators would feel no partiality toward their appointees, since the President chooses and they merely confirm.

4¹. That their agency in making treaties would

disqualify them as a court, to try their corrupt execution of that trust.

See Foed., p. 465; Story on Constitution, pp. 803-6.

2ⁱ. The Executive—w. c.

(1). The general character of the Executive. (2). The manner of his appointment. (3). The Constitutional provision for securing energy in the Executive.

1^g. The general character of the Executive.

(1). As represented by the opponents of the Constitution. (2). The true character of the Executive.

1^h. The general character of the Executive as represented by the opponents of the Constitution.

1^j. General Misrepresentations.

1^k. "The Executive is to be the full-grown progeny of monarchy."

2^k. "He is to have royal prerogatives."

2^k. "To be crowned with a diadem and dress in regal purple."

4^k. "He is to indulge in a harem."

2^k. A Particular Instance of Misrepresentation.

1^l. The Misrepresentation Stated.

The anti-Foederalists charge that the Constitution gives the President power to fill vacancies in the Senate.

("Cato," *nom de plume* of George Clinton).

2^l. The Misrepresentation Answered.

See U. S. Const., Art. II., §2, clauses 2 and 3.

1^m. The Second Clause gives the President Power to make such appointments as are not otherwise provided for in the Constitution, and which shall be established by law. Hence, this law cannot extend to the Senators, because:

(1) Their appointments are otherwise provided for, (Art. I, §3 cl. 1.); and because, (2)

they are already established by the Constitution.

2^m. The third clause cannot be understood to give to the President power to fill vacancies in the Senate, because:

1ⁿ. This third clause is only a supplement to the second, which simply authorizes the President to make temporary appointments during the recess of the Senate to certain offices (e. g., United States Judgeships), to save the expense, trouble and delay of calling the Senate together every time such an appointment had to be made.

2ⁿ. The expression, "during the recess of the Senate," was used and not "during the recess of the State Legislature," and shows that the Senators were not the officers contemplated.

3ⁿ. Art. I., §3, clause 2, actually provides the manner of filling vacancies in the Senate.

(1). If the vacancy happen when the State Legislature is not in session the Governor of the State having the vacancy appoints till the Legislature meets.

(2). If the Legislature of the State happen to be in session they proceed to fill the vacancy.

2^h. The true character of the Executive.

(1). His absolute powers. (2). His qualified powers. (3). The checks on the Executive. (4). The Executive as compared with the King of Great Britain.

1^j. The absolute powers of the Executive.

1^k. Unity. (p. 474).

2^k. The qualified right of veto.

3^k. He is commander-in-chief—

(1) Of the army of the United States;

(2) And of the State militia when in actual service.

4^k. Power to Grant Reprieves and Pardons for Offences Against the United States.

Except in two cases—

(1). In cases of impeachment.

(2). In cases of contempt of Congress.

See Gilmore's Notes, p. 176; 7 Pet. 150; 18 How. 307; 4 Wall. 333; 13 Wall. 128 and 154.

5^k. Power to make recommendations to Congress.

6^k. Power to call extra sessions of Congress and to adjourn both Houses when they cannot agree on the time of adjournment. (p. 480).

7^k. Power to Execute the Laws.

8^k. Power to receive Ambassadors.

2^j. The Qualified Powers of the Executive.

1^k. To Make Treaties with the Advice and Consent of the Senate.

2^k. To Make Appointments to Office with the Advice and Consent of the Senate.

3^j. Checks on the Executive.

1^k. Liability to Impeachment.

2^k. Term of Office—only four years.

3^k. His Command of the Militia-contingent.

4^k. No Power to Declare War or Raise Armies and Fleets.

5^k. No power to adjourn Congress except in one case. (6^k.)

4^j. The Executive as compared with the King of Great Britain.

1^k. As to duration in office.

(1). The President elected for four years.

(2). The King of Great Britain is a perpetual and hereditary prince.

2^k. As to Veto Power.

(1). The President has only a qualified veto.

(2). The King an absolute veto.

3^k. As to Military and Naval Matters.

(1). The President is Commander-in-Chief.

(2). In addition, the King can declare war and and raise armies. (p. 485).

4^k. As to Amenity to Punishment.

(1). The President is Impeachable.

(2). The King is Inviolable.

5^k. As to Treaty-Making.

(1). The President is associated with the Senate.

(2). The King is absolute.

6^k. As to Appointments to Office.

(1). The President is associated with the Senate.

(2). The King is absolute. (p. 486).

7^k. As to Granting Privileges.

(1). The President can grant none.

(2). The King is their fountain.

8^k. As to Power Over Commerce and Currency.

(1). The President can make no rules in respect thereto.

(2). The King is in fact the arbiter of commerce and can regulate weights and measures.

9^k. As to Religious Matters.

(1). The President is no ex-officio "pillar of the church."

(2). The King is head of the church.

2^s. The Manner of the Appointment of the Executive.

(1). The manner of his appointment. (2). Its advantages.

1^h. The Manner of Appointment of the Executive, including the Vice-President.

1ⁱ. The Manner of Appointment prior to 1804.

See Const., Art. II., §1, clause 2.

2^j. The Manner of Appointment since 1804.

Amendment XII was the result of the long and momentous struggle in the House of Representatives between Jefferson and Burr for the

Presidency, in 1801, growing out of the defects of the original Article.

2^h. The Advantages of the Manner of Appointment of the Executive.

It was the intention of the framers of the Constitution for the people to select the electors merely and for the electors to select the President, giving them the right of an independent choice, unimpaired by instructions. Had the spirit of the Constitution been followed the following advantages would result:

1ⁱ. The sense of the people would sufficiently operate in their choice of electors.

2ⁱ. The electors, being a small and select body, (1) would be peculiarly fitted for the purpose, and (2) they would act under circumstances most favorable to deliberation.

3ⁱ. It would prevent tumult and disorder.

4ⁱ. It would prevent cabal and corruption.

Under our present system of National nominating conventions, the electors might be called on to select in case the person receiving the majority of the electoral vote should die before the meeting of the electoral college; as would have been the case had Horace Greeley received a majority of the electoral vote.

3^h. The Constitutional Provisions for Securing Energy in the Executive.

(1). The ingredients which constitute this energy.

(2). The ingredients which constitute safety in the Republican sense. (3). The Constitutional provisions to combine safety and energy examined.

1^h. The Ingredients Which Constitute This Energy.

(1). Unity. (2). Duration. (3). Adequate compensation. (4). Competent powers.

2^h. Ingredients Which Constitute Energy in the Republican Sense.

(1). Due dependence on the people. (2). Due responsibility.

3^h. The Constitutional Provisions to Combine Safety and Energy Examined.

1^j. In Respect of Unity.

(1). Objection to a plural Executive. (2). Advantages of a single Executive.

1^k. Objections to a Plural Executive. (p. 492).

1^l. Dissensions and indecisions.

2^l. It conceals faults and destroys responsibility.

3^l. Additional Expense.

2^k. Advantages of a Single Executive.

See 1^k.

2^j. In respect of duration of office. (p. 496).

(1) The extent of duration in office of the President; (2) the objects of duration in office; (3) the re-eligibility of the President.

1^k. The Extent of Duration in Office of the President.

The term of four years was finally settled on by the convention as best satisfying the two requisites of

(1) Stability of the administration, and (2) a proper dependence on the Executive on the people.

2^k. The objects of duration in office of the President; there are two:

(1) To give to the President personal firmness in the employment of his Constitutional powers, and (2) to give stability to his administration.

1^l. To give to the President personal firmness in the employment of his Constitutional powers.

1^m. From the principle that the greater a man's tenure of a place, or property, the greater his interest in it. (p. 497).

2^m. By its preventing an undue and servile pliancy of the Executive to the Congress or to the people. (p. 500).

3^m. By its tendency to keep separate the three departments of Government.

2^l. To give stability to the Administration of the President. (p. 502).

(1). Administration of Government defined.

(2). The functions of the President. (3). The effect of duration on the stability of the President's Administration.

1^m. Administration of Government defined.

1ⁿ. In its largest sense.

It comprehends all the operations of the body politic, whether Executive, Legislative or Judiciary.

2ⁿ. In its most usual and precise sense.

It is limited to Executive details, and falls peculiarly within the province of the Executive Department.

2^m. The functions of the President.

1ⁿ. The general superintendence of these matters.

1^o. The conduct of foreign negotiations.

2^o. The preparatory plans of finance.

3^o. The application and disbursement of appropriations.

4^o. The direction of the Army and Navy.

2ⁿ. The appointment of the persons having immediate management of the above functions.

3^m. The effect of duration in office on the stability of the President's Administration.

Frequent changes of men usually mean frequent changes of measures, or instability of Government.

3^k. The re-eligibility of the President.

(1). Its advantages. (2). Its pretended disadvantages.

1^l. The advantages of the re-eligibility of the President.

1^m. As an inducement to good behavior.

2^m. To prevent the temptation to sordid views, to peculations and to usurpations.

3^m. To lessen the number of ex-Presidents "wandering among the People like discontented ghosts and sighing for a place they were never more to fill." (p. 505).

[As examples of the contrary spirit: John Quincy Adams was a member of the House of Representatives, after having been President, and died in Congress; ex-President Tyler acted as Justice of the Peace, and ex-President Andrew Jackson acted as road overseer.]

4^m. The people might avail themselves of the experience gained by the President in the exercise of his office. (p. 506).

5^m. There are particular junctures in a State when the continuance of one man in office is of the greatest moment to the public interests.

6^m. Ineligibility would amount to a constitutional interdiction of stability of administration. (p. 506).

2^l. The Pretended Disadvantages of Re-eligibility.

1^m. Greater Independence of the President
This is a doubtful proposition.

2^m. Greater Security to the People.

It is very questionable policy to prevent the people from continuing in office men who have commended themselves to confidence.

3^l. An adequate provision for the support of the President.

(1). How secured by the Constitution.

(2). The necessity for such declaration in the Constitution. (p. 509).

1^k. How secured by the Constitution.

"The President of the United States shall receive for his service a compensation which shall neither be increased nor diminished during the time for which he shall have been elected, and he shall not receive within that period any other

emolument from the United States, or any of them."

2^k. The necessity for such a declaration in the in the Constitution.

1^l. It was not to be left to the Congress.

For a control over a man's support being in general a control over his will, it would have rendered the Executive obsequious to the Legislative Department and thus made the separation of the three departments merely theoretical. (p. 509).

2^l. It could not be definitely fixed in the Constitution, because of the varying of circumstances and in the value of money; an amount that would be proper now might be entirely inadequate ten years hence.

4^j. Competent Powers.

1^k. The Power of a Qualified Veto.

(1). The objects of this power.

(2). Its nature and reasons therefor.

1^l. The Objects of This Power.

1^m. To protect the Executive against the encroachments of the Legislature. (p. 510).

2^m. To guard against the enactment of bad laws.

This assumes not that the President, or one man, will possess more wisdom than Congress, or many men, but that the oftener measures are examined the greater the likelihood of avoiding their defects.

2^l. The Nature of This Power, and Reasons Therefor.

1^m. The Nature of a Qualified Veto.

By this is meant that when a bill passes both Houses of Congress it must be presented to the President, either to sign it and thus make a law, or to return it to the House originating it, with his objections, and it shall require two-thirds of each House to pass a bill over his veto. (p. 514).

2^m. Reasons for a Qualified Veto.

An absolute veto would be less readily used : a man who might be afraid to defeat a law by his single veto, might not scruple to return it for reconsideration.

2^k. Power of "*Commander-in-Chief of the Army and Navy of the United States and of the militia of the several States when called into the actual service of the United States.*"

3^k. Power to require the opinion in writing "*of the principal officer in each of the Executive Departments upon any subject relating to the duties of their respective offices.*"

4^k. Power "*to grant reprieves and pardons for offences against the United States except.*" (p. 517.)

(1) In cases of impeachment.

(2) In cases of punishments for contempts imposed by Congress. (7 Pet. 150 ; 4 Wall. 343 ; Ex-Attorney-General Garland's case, 4 Wall. 333).

5^k. Power "*by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.*"

There are five ways in which this power could have been delegated, contended for. (p. 519).

(1). To the Senate and President jointly.

(2). To the Senate alone.

(3). To the President alone.

(4). By joining the House of Representatives in a share of the power.

(5). In requiring two-thirds of all the Senators.

1^l. The Constitution gives the power to the President and Senate jointly.

1^m. Treaty-making is partly a legislative and partly an Executive act, in that a treaty partakes of the nature of a law and of a contract.

2^m. The Senate is associated rather than the House of Representatives, or both the House of Representatives and Senate, because of its superior wisdom and its greater stability.

2^l. It would not be best to grant this power to the Senate alone.

1^m. Treaty-making not being altogether a legislative act.

2^m. The benefit of the Constitutional agency of the President would have been lost. (p. 522).

3^l. It would not be best to grant this power to the President alone.

1^m. It is not wholly an Executive act.

2^m. It would be unsafe.

4^l. It would not have been best to have associated the House of Representatives.

See Foed., pp. 448 and 523 and seq.; ante, p. 183.

5^l. The reasons for requiring two-thirds of *all the Senators present* and *not two-thirds of all the Senators*.

See Foed., p. 143.

6^k. The power "*to nominate and, by and with the advice and consent of the Senate, to appoint ambassadors, other public ministers and consuls, Judges of the Supreme Court and all other officers of the United States, whose appointments are not otherwise provided for in the Constitution.*" (p. 526).

(1). The advantage of this plan. (2). The disadvantages of others.

1^l. The Advantages of This Plan.

1^m. In vesting the appointments solely in the President.

1ⁿ. The undivided responsibility will beget a livelier sense of duty.

2ⁿ. He will have fewer personal attachments than a body of men.

3^a. He will be free from that diversity of views and interests that distract a collective body. (p. 528).

4^a. Appointments to office will be more generally the result of merit than of political "trades."

2^m. In vesting the confirmation of the appointments in the Senate.

1ⁿ. It secures all the advantages from vesting the whole power solely in the President. Whoever may be chosen will be the choice of the President, and the responsibility of the appointment would still rest on him.

2ⁿ. It Avoids Several Disadvantages of a Sole Power in the President.

1°. They will be a powerful check on the favoritism of the President.

2°. They will contribute to the stability of the Administration.

The consent of the Senate would be necessary to displace as well as to appoint to office. (p. 532).

[The present doctrine is that this consent is necessary].

7^k. The Power of Giving Information to Congress of the State of the Union.

8^k. The power of recommending measures to Congress.

9^k. The power of convening both Houses or either of them on extraordinary occasions.

Power to convene either House was given to prevent the convening of the House of Representatives when a treaty was to be considered.

10^k. Power to adjourn Congress when they cannot agree on a day.

11^k. Power to receive ambassadors, etc.

12^k. Power to administer the laws. (p. 536).

13^k. Power to commission all United States officers.

3^t. The Judiciary—w. c.

- (1). The necessity for a Foederal Judicature.
- (2). The manner of constituting it.
- (3). Its extent.

1^s. The Necessity for a Foederal Judicature.

See Foed., p. 146.

2^s. The Manner of Constituting the Judiciary.

(1) The mode of appointing the judges; (2) their tenure of office; (3) the partition of the judiciary authority between different courts and their relations to each other.

1^h. The Mode of Appointing the Judges.

See Foed., p. 526 and seq.; ante p. 218 and seq.

2^h. The Tenure of Office of the Judges.

(1) Their duration in office; (2) their compensation; (3) the precautions for their responsibility.

1^j. The Duration in Office of the Judges.1^k. The Constitutional provision thereon.

The judges hold their offices during good behavior, though by Act of Congress a Judge who is seventy years of age and has served ten years can resign on full pay.

2^k. The Reasons for Such Duration in Office of the Judges.

1^l. It conforms to the most approved of the then (1787) State Constitutions.

2^l. To secure the independence of the Judges.

1^m. The Weakness of the Judiciary.

Their tendency is to be the weakest of the three departments of the Government.

2^m. The Necessity for Independence in the Judges.

1ⁿ. If the Judiciary is not strong enough to secure its independence of either of the other branches, the Union of two against one will result and tyranny will be unavoidable.

2ⁿ. Because of our limited Constitution.

Limitations on the Legislature can only be

preserved through the courts with their power of declaring unconstitutional acts void.

This does not imply superiority of the Judiciary over the Legislative, only the superiority of the Constitution over both. (p. 547).

3^a. In checking bad legislation.

4^a. In warding the Constitution and the Rights of the People against the effects of ill humor.

5^a. To give time to the judges to Qualify themselves and become familiar with the Laws and Precedents.

6^a. As an inducement to fit men to accept the Positions.

2^j. The Compensation of the Judges.

(1). The constitutional provision and (2) reasons therefor.

1^k. The Constitutional Provision.

The judges of the United States "shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office."

2^k. The Reasons Therefor.

The fluctuation of money would not admit of a fixed salary in the Constitution and hence it was necessary to leave this to the discretion of Congress without the power of lessening their salaries.

3^j. The Precautions for Their Responsibility.

They are liable to impeachment.

3^h. The Partition of the Judiciary Authority between the different courts and their relations to each other.

(1) The Constitutional provision thereon; (2) the distribution of judicial authority between the Supreme Court and the inferior courts; (3) the jurisdiction of State courts on Foederal questions w. c. (p. 559).

1^j. The Constitutional Provision Thereon.

(1) The provision stated; (2) the necessity for one Supreme Court as a separate and distinct body; (3) the necessity for inferior courts.

1^k. The Provision Stated.

"The judicial power of the United States is to be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish."

2^k. The Necessity for One Supreme Court as a Separate and Distinct Body.

1^l. To guard against an improper intermixture of powers.

2^l. To prevent the absurdity of referring the revision of the decisions of permanent judges to those appointed for only one, two or six years, as in the case of Representatives and Senators. (p. 562).

3^l. Members of the Legislative Departments are not often selected for their Judicial qualities. (p. 564).

3^k. The necessity for inferior courts.

1^l. As a matter of convenience.

It will prevent the necessity of an appeal to the Supreme Court in every case of Foederal cognizance.

2^l. As an aid to the Supreme Court.

3^l. Because the State Courts would not be proper substitutes.

1^m. From their local spirit.

2^m. From the peculiar tenure of the State Judges.

2^l. The distribution of Judicial Authority between the Supreme Court and the inferior courts.

1^k. The Judicial Authority of the Supreme Court.

1^l. The original jurisdiction of the Supreme Court.

1^m. "In cases affecting Ambassadors, other public ministers and consuls."

2^m. "In cases in which a State shall be a Party."

2^l. The Appellate Jurisdiction of the Supreme Court.

1^m. In matters of law. (p. 568).

This power is unquestioned.

2^m. In matters of Fact.

(1) The meaning of "*appellate*" in this connection; (2) it does not endanger trial by jury.

1ⁿ. The meaning of "*appellate*" in this connection.

It denotes the power of one tribunal to review the proceedings of another, either as to the law or fact, or both. (p. 569).

2ⁿ. This provision does not endanger Trial by Jury. (Foed. p. 569 and seq. See at length Foed. pp. 557-559.)

This provision was adopted because:

(1). The appellate jurisdiction will extend to

(a). Cases at common law where a revision of the law will be necessary.

(b). Cases under the civil law where facts and law are properly and usually reviewed.

(2). Express exceptions would not do, hence the most practical plan was that adopted, subject "to such exceptions and under such regulations as the Congress shall make."

(See Foed. p. 569 and seq). (p. 572).

3^l. The jurisdiction of State Courts on Foederal Questions.

The jurisdiction of State Courts will remain as it was except where the contrary is shown by the Constitution, or subsequent acts of Congress. (p. 572).

As to the course of appeal.

(1). It would certainly lie to the Supreme Court of the United States. (p. 574).

(2). And probably to the subordinate Foederal Courts. (p. 575 and seq).

3^e. The extent of the Judiciary Authority.

The Judiciary authority of the Union is to extend :

1^h. To all cases in law and equity arising under the Constitution of the United States.

2^h. To cases of Treaties, Ambassadors, other public Ministers and Consuls. (p. 558).

3^h. To cases of Admiralty and Maritime Jurisdiction.

4^h. To controversies to which the United States shall be a party

5^h. To Controversies

(1). Between two or more States.

(2). Between a State and citizens of another State.

(3). Between citizens of different States.

6^h. To cases between citizens of the same State claiming lands under grants of different States.

7^h. To cases between a State and the citizens thereof.

6^e. Objections to the Constitution Answered.

(1). "The Constitution has no Bill of Rights."

(2). "The people will be too remote from the capital to watch their Representatives."

(3). "There is no provision securing the debts due the United States;" (4) "the great expense of the Government."

1^d. "The Constitution has no Bill of Rights."

1^e. Several of the States, including New York, have no Bill of Rights. (p. 595).

2^e. The Constitution has its Equivalent.

1^f. Limiting the Government in Cases of Impeachment.

2^f. Preserving the Writ of *Habeas Corpus*.

3^f. Prohibiting Bills of Attainder and *ex post facto* Laws.

4^f. Prohibiting Titles of Nobility.

5^f. Preserving Jury Trial in Criminal Cases.

6^f. Defining Treason.

7^f. Limiting the Punishment of Treason.

8^f. Guaranteeing to the States a Republican Form of Government.

3^e. Bills of Rights go into Particulars and Details and are more appropriate in State Constitutions.

4^e. Bills of Rights are often Dangerous.

The prohibition of certain powers not granted might give a pretence for claiming others not prohibited.

2^d. "The People will be too Remote from the Capital to Watch their Representatives."

1^e. This Argument Proves too Much.

It would prove that there should be no general government.

2^e. The people will have the usual sources of Information and Safety.

1^f. Through the Press.

2^f. Through the State Governments.

3^f. The people near the seat of the Government will have personal information.

3^d. "There is no provision Securing the Debts of the United States.

States do not lose their rights or avoid liabilities by a change of Government. (p. 503; Grotius, B. II., chap. ix.)

4^d. "The great expense of the Government."

1^e. This is no valid objection if the proposed Government be necessary, even if the objection be true.

2^e. As a matter of fact, there will probably be fewer burdens in the matter of expense to the individual citizen than under the Articles of Confederation. (pp. 503, 504 and seq).

5^a. *The Analogy of the Proposed Constitution to the Constitution of New York.*

1^b. In its Supposed Defects.

1^c. The Re-eligibility of the President.

2^c. The Want of a Council.

3^c. The Want of a Bill of Rights.

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- 2^b. In its real excellence.
- 6^a. *The Additional Security Which the Adoption of the Constitution Will Afford to Republican Government, to Liberty and Property.*
- 1^b. Through the restraint which the preservation of the Union will have (1) on local factions, etc.; (2) on foreign intrigue, and (3) on military establishments.
- 2^b. In the express guarantee of a Republican form of Government.
- 3^b. In the Prohibition of Titles of Nobility.
- 4^b. In the wise restrictions on the States. Part III.

PART III.—Conclusion.

- 1^a. The Necessity for an Immediate Adoption of the Constitution.
- 1^b. No Perfect Constitution can result from Imperfect man.
- 2^b. No Better Constitution is likely to result from another Convention.
- 3^b. The precarious condition of the country demands an early change.
- 2^a. Amendments to the Constitution can best be secured by first adopting the Constitution.

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